



# Federal Register

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**Wednesday**

**Sept. 12, 2001**



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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** September 20, 2001—9:00 a.m. to noon  
**WHERE:** Office of the Federal Register  
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800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538; or  
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# Rules and Regulations

Federal Register

Vol. 66, No. 177

Wednesday, September 12, 2001

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF JUSTICE

### 8 CFR Part 3 and 28 CFR Part 0

[EOIR No. 129F; AG Order No. 2512–2001]

RIN 1125–AA34

#### Executive Office for Immigration Review; Board of Immigration Appeals; 23 Board Members

**AGENCY:** Executive Office for Immigration Review, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends 8 CFR part 3 and 28 CFR part 0 by adding to the Board of Immigration Appeals (Board) two Board Member positions, thereby expanding the Board to 23 permanent members. The Board is being expanded in order to maintain an effective, efficient system of appellate adjudication in the face of the Board's increasing caseload.

**EFFECTIVE DATE:** This final rule is effective September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** This final rule expands the Board to 23 permanent members by adding two Board Member positions. With this change, the Board will consist of a Chairman, two Vice Chairmen, and twenty other members. This change is necessary to maintain an effective, efficient system of appellate adjudication in light of the Board's increasing caseload. This rule amends 8 CFR part 3 and 28 CFR part 0 to reflect these changes in the Board's organization.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking is not required because this rule relates to agency organization, procedure, and practice, and a delayed effective date is

unnecessary because it does not substantially affect the rights or obligations of non-agency parties. *See* 5 U.S.C. 553(b)(a), (d)(3).

#### Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### Executive Order 12866

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

#### Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not

have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### Congressional Review Act

This action pertains to agency organization, practice, and procedure and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act. (Subtitle E of the Small Business Regulatory Enforcement Act of 1996 (SBREFA). Therefore, the reporting requirement of 5 U.S.C. § 801 does not apply.

#### Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

#### List of Subjects

##### 8 CFR Part 3

Administrative practice and procedure, Immigration, Lawyers, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

##### 28 CFR Part 0

Authority delegation (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, for the reasons set forth in the preamble, part 3 of chapter I of title 8 of the Code of Federal Regulations and part 0 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

#### PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

**Subpart A—Board of Immigration Appeals****§ 3.1 [Amended]**

2. In § 3.1, amend paragraph (a)(1) by revising the second sentence to read as follows:

\* \* \* The Board shall consist of a Chairman, two Vice Chairmen, and twenty other members. \* \* \*

**PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

3. The authority citation for 28 CFR part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

**Subpart U—Executive Office for Immigration Review**

4. Amend § 0.116 by revising the first sentence to read as follows:

**§ 0.116 Board of Immigration Appeals.**

The Board of Immigration Appeals shall consist of a Chairman, two Vice Chairmen, and twenty other members.

\* \* \* \* \*

Dated: September 6, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01–22906 Filed 9–11–01; 8:45 am]

**BILLING CODE 4410–30–P**

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 72**

**RIN 3150–AG75**

**List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P and –52B Revision; Confirmation of Effective Date**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is confirming the effective date of September 12, 2001, for the direct final rule that appeared in the **Federal Register** of June 29, 2001 (66 FR 34523). This direct final rule amended the NRC's regulations by revising the Standardized NUHOMS®–24P and –52B cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 3 to Certificate of Compliance Number 1004. Amendment No. 3 will modify the

present cask system design to add the –61BT dry storage canister which is the storage portion of a dual purpose cask design intended to both store and transport spent fuel. This document confirms the effective date.

**DATES:** The effective date of September 12, 2001, is confirmed for this direct final rule.

**ADDRESSES:** Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website (<http://ruleforum.llnl.gov>). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail [CAG@nrc.gov](mailto:CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Gordon Gundersen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6195 (E-mail: [GEG1@nrc.gov](mailto:GEG1@nrc.gov)).

**SUPPLEMENTARY INFORMATION:** On June 29, 2001 (66 FR 34523), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72 by revising the Standardized NUHOMS™–24P and –52B cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 3 to Certificate of Compliance Number 1004. Amendment No. 3 will modify the present cask system design to add the –61BT dry storage canister which is the storage portion of a dual purpose cask design intended to both store and transport spent fuel. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC received a number of comments requesting an extension to the public comment period, but no supporting rationale for the extension request was provided. Some of these commenters also provided additional comments with their request. The NRC has evaluated these additional comments and determined that none of them were significant and adverse to warrant withdrawal of the direct final rule, or supported a need for an extension of the comment period.

Therefore, the request for extension is denied and the direct final rule will become effective as scheduled, September 12, 2001.

Dated at Rockville, Maryland, this 6th day of September, 2001.

For the Nuclear Regulatory Commission.  
**Michael T. Lesar,**  
*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 01–22863 Filed 9–11–01; 8:45 am]

**BILLING CODE 7590–01–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. 2000–NM–334–AD; Amendment 39–12435; AD 2001–18–09]**

**RIN 2120–AA64**

**Airworthiness Directives; Boeing Model 777–200 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 series airplanes, that requires inspections for cracking of the web of the horizontal and sloping pressure decks of the fuselage and certain stiffener splice angles and stiffener end fittings, and repair, if necessary. This amendment also provides an optional preventative modification, which ends the repetitive inspections. The actions specified by this AD are intended to find and fix cracking of the web of the horizontal and sloping pressure decks, which could result in rapid in-flight decompression of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective October 17, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 17, 2001.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

98055-4056; telephone (425) 227-2772; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777-200 series airplanes was published in the **Federal Register** on June 27, 2001 (66 FR 34130). That action proposed to require inspections for cracking of the web of the horizontal and sloping pressure decks of the fuselage and certain stiffener splice angles and stiffener end fittings, and repair, if necessary. That action also proposed to provide an optional preventative modification, which ends the repetitive inspections.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 93 Model 777-200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 36 work hours per airplane to accomplish the required inspections, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$58,320, or \$2,160 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2001-18-09 BOEING:** Amendment 39-12435. Docket 2000-NM-334-AD.

Applicability: Model 777-200 series airplanes, line numbers 001 through 093 inclusive, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

**Compliance:** Required as indicated, unless accomplished previously.

To find and fix cracking of the web of the horizontal and sloping pressure decks, which could result in rapid in-flight decompression of the airplane, accomplish the following:

### Initial Inspections

(a) Do the inspections in paragraphs (a)(1), (a)(2), and (a)(3) of this AD at the compliance times specified in those paragraphs. Do the inspections according to the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-53-0004, dated May 11, 2000.

(1) *Area 1:* Prior to the accumulation of 16,000 total flight cycles, do an internal high frequency eddy current (HFEC) inspection or an external low frequency eddy current (LFEC) inspection of the horizontal pressure deck web in Inspection Area 1, as defined in the service bulletin.

(2) *Area 2:* Prior to the accumulation of 31,000 total flight cycles, do an internal HFEC inspection or an external LFEC inspection of the horizontal pressure deck web, an internal HFEC inspection of the sloping pressure deck, and a detailed visual inspection of the stiffener end fittings at body station (BS) 1245 and the stiffener splice angles at BS 1287, in Inspection Area 2, as defined in the service bulletin.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(3) *Area 3:* Prior to the accumulation of 46,000 total flight cycles, do an internal HFEC inspection or an external LFEC inspection of the horizontal pressure deck web, and an internal HFEC inspection of the sloping pressure deck, in Inspection Area 3, as defined in the service bulletin.

### Repetitive Inspections

(b) Repeat the inspections in paragraph (a) of this AD at least every 2,500 flight cycles for areas inspected using the HFEC or detailed visual inspection method, or at least every 1,000 flight cycles for areas inspected using the LFEC inspection method, until paragraph (d) of this AD is done.

### Corrective Actions

(c) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD: Before further flight, repair the affected area according to Boeing Special Attention Service Bulletin 777-53-0004, dated May 11, 2000; except, where the service bulletin says to contact Boeing for repairs, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated

Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Repair according to this paragraph ends the repetitive inspections required by paragraph (b) of this AD for the repaired area.

#### Optional Preventative Modification

(d) Modification of Inspection Areas 1, 2, and 3, according to Boeing Special Attention Service Bulletin 777-53-0004, dated May 11, 2000, ends the repetitive inspections required by paragraph (b) of this AD for the modified area.

#### Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

#### Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

#### Incorporation by Reference

(g) With the exception of certain requirements in paragraph (c) of this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 777-53-0004, dated May 11, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

#### Effective Date

(h) This amendment becomes effective on October 17, 2001.

Issued in Renton, Washington, on August 31, 2001.

**Ali Bahrami,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 01-22588 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-13-U**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

#### 20 CFR Parts 1 and 30

**RIN 1215-AB32**

#### Performance of Functions Under this Chapter; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

**AGENCY:** Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

**ACTION:** Interim final rule; reopening and extension of comment period.

**SUMMARY:** The Department of Labor is reopening and extending the comment period for the interim final rule it published on May 25, 2001 (66 FR 28948). The comment period closed on August 23, 2001, and is being reopened (retroactive to that date) and extended for an additional period.

**DATES:** The Department will continue to accept written comments on the interim final rule from interested parties. Comments on the interim final rule must be received by September 24, 2001.

**ADDRESSES:** Submit written comments on the interim final rule to Shelby S. Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S-3524, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Shelby S. Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S-3524, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202-693-0036 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In response to requests from members of the public, the Department has decided to reopen and extend the public comment period for the interim final rule it published on May 25, 2001 (66 FR 28948). The comment period closed on August 23, 2001, and is being reopened (retroactive to that date) and extended through September 24, 2001. In the interim final rule, which became effective on July 24, 2001, the Department promulgated regulations governing its administration of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Pub. L. 106-398, 114 Stat. 1654, 1654A-

1231 (October 30, 2000). The EEOICPA established a compensation program to provide a lump sum payment of \$150,000 and medical benefits as compensation to covered employees suffering from designated illnesses incurred as a result of their exposure to radiation, beryllium, or silica while in the performance of duty for the Department of Energy and certain of its vendors, contractors and subcontractors. This legislation also provided for payment of compensation to certain survivors of these covered employees, as well as for payment of a smaller lump sum (\$50,000) to individuals (who would also receive medical benefits), or their survivor(s), who were determined by the Department of Justice to be eligible for compensation under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

Signed at Washington, DC, this 7th day of September, 2001.

**Elaine L. Chao,**

*Secretary of Labor.*

[FR Doc. 01-22960 Filed 9-11-01; 8:45 am]

**BILLING CODE 4510-CH-P**

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

#### 28 CFR Part 0

**[A.G. Order No. 2511-2001]**

#### Organization; United States Marshals Service

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulation that describes the structure, functions, and responsibilities of the United States Marshals Service of the Department of Justice. The rule will describe fully the authority delegated to the Director of the United States Marshals Service to exercise the power and authority vested in the Attorney General under 18 U.S.C. 3521 to provide for the health, safety, and welfare of Government witnesses and their families.

**EFFECTIVE DATE:** September 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Auerbach, Senior Litigation Counsel, United States Marshals Service, 600 Army Navy Drive, CS-3, Arlington, Virginia, 22202-4210, (202) 307-9054.

**SUPPLEMENTARY INFORMATION:** The Department's description of the United States Marshals Service is being revised

in order to describe fully the authority delegated to the Director of the Service pursuant to 18 U.S.C. 3521. This description is contained in a new paragraph designated as § 0.111b.

#### **Administrative Procedure Act**

This rule relates to a matter of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2).

#### **Regulatory Flexibility Act**

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. A Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

#### **Executive Order 12866**

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, Regulatory Planning and Review. The rule is limited to agency organization, management and personnel as described by section (3)(d)(3) of Executive Order 12866 and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

#### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Executive Order 12988**

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

#### **Plain Language Instructions**

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Gerald M. Auerbach, Senior Litigation Counsel, at the address and telephone number listed above.

#### **List of Subjects in 28 CFR Part 0**

Authority delegations (Government agencies), Government employees, Organization and functions (government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

#### **PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE**

1. The authority citation for Part 0 continues to read as follows:

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

#### **Subpart T—United States Marshals Service**

2. Amend Part 0 to add new section 0.111b to read as follows:

##### **§ 0.111B Witness Security Program.**

(a) In connection with the protection of a witness, a potential witness, or an immediate family member or close

associate of a witness or potential witness, the Director of the United States Marshals Service and officers of the United States Marshals Service designated by the Director may:

(1) Provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(2) Provide housing for the person;

(3) Provide for the transportation of household furniture and other personal property to a new residence of the person;

(4) Provide to the person a payment to meet basic living expenses in a sum established in accordance with regulations issued by the Director, for such time as the Attorney General determines to be warranted;

(5) Assist the person in obtaining employment;

(6) Provide other services necessary to assist the person in becoming self-sustaining;

(7) Protect the confidentiality of the identity and location of persons subject to registration requirements as convicted offenders under Federal or State law, including prescribing alternative procedures to those otherwise provided by Federal or State law for registration and tracking of such persons; and

(8) Exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provision of law as may be required to maintain the security of protective witnesses and the integrity of the Witness Security Program.

(b) The identity or location or any other information concerning a person receiving protection under 18 U.S.C. 3521 et seq., or any other matter concerning the person or the Program, shall not be disclosed except at the direction of the Attorney General, the Assistant Attorney General in charge of the Criminal Division, or the Director of the Witness Security Program. However, upon request of State or local law enforcement officials, the Director shall, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Director knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence.

Dated: September 4, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01–22830 Filed 9–11–01; 8:45 am]

**BILLING CODE 4410–04–M**

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 100**

[CGD05-01-057]

RIN 2115-AE46

**Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, New Jersey****AGENCY:** Coast Guard, DOT.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the Atlantic City APBA Grand Prix, a marine event to be held on the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Atlantic Ocean during the event.

**DATES:** This rule is effective from 11:30 a.m. eastern time on September 22, 2001 until 3:30 p.m. eastern time on September 23, 2001.

**ADDRESSES:** Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-01-057 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6204.

**SUPPLEMENTARY INFORMATION:****Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received the request for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on September 22 and 23, 2001. Because of the dangers inherent with high-speed boat races, it is in the public interest to have these regulations in effect during the event. In

addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

**Background and Purpose**

The New Jersey Performance Power Boat Club will sponsor the Atlantic City APBA Grand Prix on September 22 and 23, 2001. The event will consist of 200 to 300 offshore powerboats conducting high-speed competitive races on the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is anticipated for the event. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

**Discussion of Regulations**

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a 3-mile long section of the Atlantic Ocean south of Absecon Inlet, extending approximately 300 yards out from the shoreline. The temporary special local regulations will be enforced from 11:30 a.m. to 3:30 p.m. eastern time on September 22 and 23, 2001, and will restrict general navigation in the regulated area during the races. Except for participants in the Atlantic City APBA Grand Prix and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean during the event.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are specifically excluded from further analysis and documentation under that section. A “Categorical Exclusion Determination” is available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

### PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add a temporary section, § 100.35–T05–057 to read as follows:

#### § 100.35–T05–057 Atlantic Ocean, Atlantic City, New Jersey.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Group Atlantic City with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participating Vessels.* Participating vessels include all vessels participating in the Atlantic City APBA Grand Prix under the auspices of the Maine Event Application submitted by the New

Jersey Performance Power Boat Club., and approved by the Commander, Coast Guard Group Atlantic City.

(4) *Regulated Area.* All waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21'50" N, longitude 074°24'37" W, to latitude 39°20'40" N, longitude 74°23'50" W, thence southwesterly to latitude 39°19'33" N, longitude 074°26'52" W, thence northwesterly to a point along the shoreline at latitude 39°20'43" N, longitude 74°27'40" W, thence northeasterly along the shoreline to latitude 39°21'50" N, longitude 074°24'37" W. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective dates.* The regulated area is effective from 11:30 a.m. eastern time on September 22, 2001 until 3:30 p.m. eastern time on September 23, 2001.

(d) *Enforcement times.* This section will be enforced from 11:30 a.m. to 3:30 p.m. eastern time on September 22 and 23, 2001.

Dated: August 29, 2001.

**Thad W. Allen,**

*Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 01–22813 Filed 9–11–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

[CGD01–01–139]

RIN 2115–AA97

### Safety Zone; Chelsea River Blasting, Boston, Massachusetts

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for

the Chelsea River during daylight hours from August 13, until September 22, 2001 in Boston, MA. The safety zone is needed to protect the maritime community from the hazards caused by the detonations of explosives to clear rocks and increase the water depth. The safety zone temporarily closes all waters of the Chelsea River 300 yards around the Great Lakes dredge barge while it is involved in the detonation of explosives in the Chelsea River turning basin. The safety zone prohibits entry into or movement within this portion of the Chelsea River during the effective period without Captain of the Port authorization.

**DATES:** This rule is effective from 9 a.m., Monday, August 13, 2001 through 7 p.m., Saturday, September 22, 2001.

**ADDRESSES:** Documents as indicated in this preamble are part of docket CGD01-01-139 and are available for inspection or copying at Marine Safety Office (MSO) Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (junior grade) Abby Wilcox, Marine Safety Office Boston, Waterways Management Division, at (617) 223-3006.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Conclusive information about dredging operations requiring explosive detonations on the Chelsea River was not provided to the Coast Guard until August 6, 2001, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Any delay encountered in this regulation's effective date would be unnecessary and contrary to public interest since immediate action is needed to protect the maritime community from hazards created by detonating explosives in the Chelsea River. General permissions to enter the safety zone will be given via local notice to mariners and marine information broadcasts during periods when the Captain of the Port determines it is safe to transit the zone. Detonations will only take place approximately one to three times per day, Monday through Saturday, during daylight hours of the effective period. The safety zone should have negligible impact on vessel transits because general permissions to transit

the zone will be given when appropriate, the rule is for a limited time period, and vessels are not precluded from using any portion of the waterway outside the safety zone.

##### **Background and Purpose**

This regulation establishes a temporary safety zone for the Chelsea River Blasting during daylight hours from August 13, 2001, through September 22, 2001 in Boston, MA. This blasting is being conducted on the eastern bank of the Chelsea River to clear an area of rock and increase the depth of water to 40 feet. The safety zone temporarily closes all waters of the Chelsea River three hundred (300) yards around the Great Lakes dredge barge while it is involved in the detonation of explosives in the Chelsea River turning basin, at a location on the eastern bank approximately 1000 yards north of the Chelsea Street Bridge. Detonations shall occur approximately one to three times per day, Monday through Saturday, during daylight hours of the effective period. Entry into or movement within this portion of the Chelsea River during the effective period is prohibited without Captain of the Port authorization. The safety zone is needed to protect the maritime community from the hazards caused by the detonations of explosives in the Chelsea River. The safety zone should have negligible impact on vessel transits because the Captain of the Port General will grant general permissions to enter the safety zone during periods when the COTP determines it is safe to transit the zone. These general permissions will be communicated via local notice to mariners and marine information broadcasts.

##### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Chelsea River, the effect of this regulation will not be significant for several reasons: The safety zone should

have negligible impact on vessel transits because the Captain of the Port will grant general permissions to enter the safety zone during periods when the COTP determines it is safe to transit the zone. Detonations will only take place one to three times per day, Monday through Saturday, during daylight hours of the effective period. Moreover, vessels are not precluded from using other portions of the Chelsea River outside the safety zone.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River between 9 a.m. on August 13, 2001 and 7 p.m. on September 22, 2001. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the safety zone is limited in duration, and the Captain of the Port will grant general permissions to enter the safety zone during periods when the COTP determines it is safe to transit the zone.

##### **Assistance for Small Entities**

Due to the short notice of the need for this regulation the Coast Guard did not have time to assist small entities under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

## Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

## Federalism

The Coast Guard analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

## Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

## Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. A rule with tribal implications has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Environment

The Coast Guard considered the environmental impact of this rule and

concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under ADDRESSES.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–139 to read as follows:

### § 165.T01–139 Safety Zone: Chelsea River Blasting, Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River three hundred (300) yards around the Great Lakes dredge barge, at a location on the eastern bank approximately 1000 yards north of the Chelsea Street Bridge.

(b) *Effective date.* This section is effective from 9 a.m. to 7 p.m. each day from Monday, August 13, 2001 through Saturday, September 22, 2001.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone will be prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of

the Port or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: August 8, 2001.

**M.E. Landry,**

*Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.*

[FR Doc. 01–22814 Filed 9–11–01; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### 37 CFR Parts 1 and 104

[Docket No. 010808202–1202–01]

RIN 0651–AB22

### Legal Processes

**AGENCY:** Office of the General Counsel, United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (“USPTO” or “Office”) is implementing rules relating to civil actions and claims involving the Office. Specifically, the rules provide procedures for service of process, for obtaining Office documents and employee testimony, for indemnifying employees, and for making a claim against the Office under the Federal Tort Claims Act.

**DATES:** Effective September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bernard J. Knight, Jr., Deputy General Counsel for General Law, at 703–308–2000.

**SUPPLEMENTARY INFORMATION:** This rule was proposed in a notice of proposed rulemaking published at 65 FR 80810 on December 22, 2000. Background information on this rule may be found in that notice.

### Discussion of Comments

*Comment:* Proposed section 104.23 purports to prohibit “employees” (which include ex-employees) from giving expert testimony regarding “Office information, subjects, or activities.” In patent infringement actions, it is common for a party to put up an ex-USPTO employee (often a very senior employee, such as a former Commissioner) as an expert witness to explain the procedures of the USPTO to

the judge or jury. It is unclear that the Office has the authority to prohibit ex-employees from so testifying, but in any event the use of ex-USPTO employees as expert witnesses on such general subjects should not be prohibited. If this is not the intent of proposed section 104.23 then the rule should be clarified.

*Response:* Under the provisions of 37 CFR 104.21(b)(2), former employees are excluded from the scope and purpose of Subpart C with respect to matters in which the former employee did not participate personally while at the Office. In addition, under 37 CFR 104.23(a)(2), the General Counsel may authorize an employee to give expert testimony in exceptional circumstances and purpose. Consequently, the rule does not prohibit former employees from giving expert testimony in appropriate circumstances.

*Comment:* Generally, it is not clear that the Office should preclude an investigation into whether inequitable conduct or fraud on the Office had been practiced in a given patent application. Interested parties (e.g., the defendant in an infringement action) should be permitted to inquire into certain events if fraud is alleged. For instance, if an exhibit had been shown at an interview and it were alleged that the exhibit (which had since been destroyed) had fraudulently represented the invention, there would be no way to obtain that information absent interviewing the Examiner—the interview summary sheet would not be effective here. Permitting such discovery would impose only a slight burden on the Office and would not be inconsistent with the policies discussed in the notice of the proposed rule. Moreover, to the extent that permitting such inquiry would assist in uncovering and deterring fraud and inequitable conduct, other important policies would be furthered. It may be appropriate to treat requests for such discovery under proposed section 104.3 (relating to exceptional circumstances). If such is the case, then the Office is requested to respond to this comment by indicating that lawsuits in which fraud/inequitable conduct issues are raised are sufficiently “exceptional” that requests for discovery into such allegations will be favorably considered (or at least deemed appropriately raised) under this rule.

*Response:* The rule does not prohibit a party from calling an employee as a fact witness. The rules do prevent inquiry into an examiner’s state of mind. For example, subjective state of mind of the employee is irrelevant to an inequitable-conduct inquiry. If fact testimony proves to be inadequate, then the parties may avail themselves of the

provisions of section 104.3, which provides that the General Counsel may waive or suspend the rules in extraordinary circumstances.

*Comment:* The application of the Department of Commerce (“DOC”) rules and the proposed USPTO rules to former employees is unnecessary to protect the legitimate interests of the Office. The existing USPTO rules of practice preclude former employees from taking any action which gives an appearance of impropriety. 37 CFR 10.110 and 10.111. Those rules give adequate protection to the USPTO for voluntary testimony by former employees concerning matters the former employees worked on while employed by the USPTO. *Friedman v. Lehman*, 40 USPQ2d 1206 (D.D.C. 1996).

*Response:* Part 10 only applies to registered patent practitioners and trademark attorneys practicing before the USPTO. If the former employee is not practicing before the USPTO, Part 10 does not apply. Thus, this proposed rule is intended to apply to all employees, not just those employees who practice before the USPTO. Indeed, some former employees do not practice before the Office. Further, Part 10 is intended to protect the public from improper conduct by practitioners, while these rules are intended in part to protect the USPTO’s deliberative or otherwise confidential information from unauthorized disclosure.

*Comment:* If, however, the USPTO does adopt rules applying to former employees, it should be made clear that such rules would not have retroactive effect, so that activity that was considered proper when performed would not now become improper and subject a former employee to some type of disciplinary action. In this regard, it would be desirable to clarify what relationship any violation of the proposed rules would have to misconduct under the disciplinary rules of 37 CFR Part 10.

*Response:* The rules are not given retroactive effect. Under the provisions of 37 CFR 10.23, misconduct potentially could include the actions of an employee who provided testimony that was not authorized by the rules. This issue, however, is within the jurisdiction of the Director, Office of Enrollment and Discipline, and is not properly addressed in these rules. Note, however, that the DOC rules have explicitly applied to former employees since 1995.

*Comment:* In addition, consideration should also be given to the effect which the current DOC rules will have with respect to former USPTO employees

which proposed § 104.21 (b) (2) would exempt. Such former USPTO employees are also former DOC employees and the proposed rules do not appear to address this question.

*Response:* While USPTO is a separate agency within the DOC, only the USPTO rules are applicable to current and former USPTO employees with respect to testimony related to official USPTO business. Of course, a former USPTO employee who is also a current or former employee of another DOC organization would be subject to the DOC rules with respect to matters related to that organization. Moreover, the exception provided by § 104.21(b)(2) for former employees, is consistent with DOC policy regarding similar testimony of former DOC employees.

*Comment:* With respect to information sought by subpoena addressed in § 104.22, the USPTO should be required to appear if it opposes a disclosure of information and should not be able to shift that obligation to the former employee. Thus, the commenter opposes the proposed rules insofar as they would enable the USPTO to sanction a former employee for failure to comply with proposed § 104.22(f) when the Office has been properly notified but does not send legal counsel to appear and contest the subpoena on behalf of the employee.

*Response:* The purpose of § 104.22(f) is not to “shift that obligation to the former employee.” The USPTO intends to seek Department of Justice representation for former employees when the General Counsel makes a determination under the rules that an employee should not comply with a subpoena. In those cases where compliance with a subpoena is commanded before Department of Justice representation can be arranged, the employee must, nevertheless, refuse to comply. In order to minimize the occurrence of this event, § 104.22(a) requires employees to immediately notify the General Counsel when they are served with a subpoena.

*Comment:* It is noted that unlike the DOC rules which define employee as including “current or former employees” (15 CFR 15.12(f)) and then consistently use the term “employee”, the proposed rules use the same definition as the DOC rules but then make a reference to “former employee” in § 104.21(b)(2). While this appears appropriate for § 104.21(b)(2), other sections seem to apply solely to a current employee but are not so limited. We believe that such potential ambiguities will render application of the rules unclear.

*Response:* The term “employee” is consistently used in the rules to refer to both current and former employees. The use of the term “former employee” in § 104.21(b)(2), which is the only section that does not apply to both current and former employees, does not create ambiguity.

*Comment:* The USPTO should clarify that proposed section 104.21(b)(2), which prohibits former employees from testifying as to matters in which they “participate[d] personally,” does not prohibit former high ranking USPTO officials or employees from providing expert testimony in court on USPTO procedures during the period when the official or employee was working at the USPTO.

*Response:* The term “participated personally” is derived from 18 U.S.C. 207(a) and is used here in keeping with the interpretation the Office of Government Ethics has given the phrase at 5 CFR 2637.201(d).

#### Other Revisions to the Proposed Rule

A new section 104.4 has been added to clarify that nothing in the rules waives or limits any requirement under the Federal Rules of Criminal or Civil Procedure. Subsection 104.24(f) has been modified to clarify the Office’s duty to seek Department of Justice representation for the employee

involved when the General Counsel makes a decision not to comply with a subpoena. In addition, other minor changes have been made to the wording of the proposed rule.

#### Other Considerations

This rule is not significant under Executive Order 12866.

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this final rule has been reviewed and previously approved by OMB under control number 0651-0046. The USPTO is not resubmitting an information collection package to OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collection under OMB control number 0651-0046.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), USPTO has certified that this rule will not have a significant impact on a substantial number of small businesses. The factual basis for this certification was provided in the Notice of Proposed Rulemaking published on December 22, 2000, 65 FR 80810. The factual basis for the

certification remains the same for this final rule, and therefore, need not be repeated.

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

#### List of Subjects in 37 CFR Parts 1 and 104

Administrative practice and procedure, Claims, Courts, Freedom of information, Inventions and patents, Tort claims, Trademarks.

For the reasons stated in the preamble, the United States Patent and Trademark Office amends 37 CFR chapter I as follows:

#### PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.17 is amended by revising paragraph (h) to read as follows:

#### § 1.17 Patent application processing fees.

\* \* \* \* \*

(h) For filing a petition to the Commissioner under one of the following sections which refers to this paragraph .....	\$130.00
§ 1.12—for access to an assignment record	
§ 1.14—for access to an application	
§ 1.47—for filing by other than all the inventors or a person not the inventor	
§ 1.53(e)—to accord a filing date	
§ 1.59—for expungement and return of information	
§ 1.84—for accepting color drawings or photographs	
§ 1.91—for entry of a model or exhibit	
§ 1.102—to make an application special	
§ 1.103(a)—to suspend action in an application	
§ 1.138(c)—to expressly abandon an application to avoid publication	
§ 1.182—for decision on a question not specifically provided for	
§ 1.183—to suspend the rules	
§ 1.295—for review of refusal to publish a statutory invention registration	
§ 1.313—to withdraw an application from issue	
§ 1.314—to defer issuance of a patent	
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent	
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent	
§ 1.644(e)—for petition in an interference	
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference	
§ 1.666(b)—for access to an interference settlement agreement	
§ 1.666(c)—for late filing of an interference settlement agreement	
§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term	
§ 5.12—for expedited handling of a foreign filing license	
§ 5.15—for changing the scope of a license	
§ 5.25—for a retroactive license	
§ 104.3—for waiver of a rule in Part 104 of this title	

\* \* \* \* \*

3. Redesignate subchapter B to read as follows:

#### **SUBCHAPTER B—ADMINISTRATION**

4. Add Part 104 to read as follows:

### **PART 104—LEGAL PROCESSES**

#### **Subpart A—General Provisions**

Sec.

104.1 Definitions.

104.2 Address for mail and service; telephone number.

104.3 Waiver of rules.

104.4 Relationship of this Part to the Federal Rules of Civil and Criminal Procedure.

#### **Subpart B—Service of Process**

104.11 Scope and purpose.

104.12 Acceptance of Service of Process.

#### **Subpart C—Employee Testimony and Production of Documents in Legal Proceedings**

104.21 Scope and purpose.

104.22 Demand for testimony or production of documents.

104.23 Expert or opinion testimony.

104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.

#### **Subpart D—Employee Indemnification**

104.31 Scope.

104.32 Procedure for requesting indemnification.

#### **Subpart E—Tort Claims**

104.41 Procedure for filing claims.

104.42 Finality of settlement or denial of claims.

**Authority:** 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101, except as otherwise indicated.

#### **Subpart A—General Provisions**

##### **§ 104.1 Definitions.**

*Demand* means a request, order, or subpoena for testimony or documents for use in a legal proceeding.

*Director* means the Director of the United States Patent and Trademark Office.

*Document* means any record, paper, and other property held by the Office, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, maps, graphs, pamphlets, notes, charts, tabulations, analyses, statistical or informational accumulations, any kind of summaries of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions.

*Employee* means any current or former officer or employee of the Office.

*Legal proceeding* means any pretrial, trial, and posttrial stages of existing or reasonably anticipated judicial or

administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings.

*Office* means the United States Patent and Trademark Office, including any operating unit in the United States Patent and Trademark Office, and its predecessors, the Patent Office and the Patent and Trademark Office.

*Official business* means the authorized business of the Office.

*General Counsel* means the General Counsel of the Office.

*Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videotaped statements or any responses given during discovery or similar proceedings, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or 28 U.S.C. 1746.

*United States* means the Federal Government, its departments and agencies, individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

##### **§ 104.2 Address for mail and service; telephone number.**

(a) Mail under this part should be addressed to General Counsel, United States Patent and Trademark Office, P.O. Box 15667, Arlington, VA 22215.

(b) Service by hand should be made during business hours to the Office of the General Counsel, Crystal Park Two, Suite 905, 2121 Crystal Drive, Arlington, Virginia.

(c) The Office of the General Counsel may be reached by telephone at 703-308-2000 during business hours.

##### **§ 104.3 Waiver of rules.**

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, sua sponte or on petition of an interested party to the Director, subject to such requirements as the General Counsel may impose. Any petition must be accompanied by the petition fee set forth in § 1.17(h) of this title.

##### **§ 104.4 Relationship of this Part to the Federal Rules of Civil or Criminal Procedure.**

Nothing in this part waives or limits any requirement under the Federal Rules of Civil or Criminal Procedure.

#### **Subpart B—Service of Process**

##### **§ 104.11 Scope and purpose.**

(a) This subpart sets forth the procedures to be followed when a summons and complaint is served on the Office or on the Director or an employee in his or her official capacity.

(b) This subpart is intended, and should be construed, to ensure the efficient administration of the Office and not to impede any legal proceeding.

(c) This subpart does not apply to subpoenas, the procedures for which are set out in subpart C.

(d) This subpart does not apply to service of process made on an employee personally on matters not related to official business of the Office or to the official responsibilities of the employee.

##### **§ 104.12 Acceptance of service of process.**

(a) Any summons and complaint to be served in person or by registered or certified mail or as otherwise authorized by law on the Office, on the Director, or on an employee in his or her official capacity, shall be served as indicated in § 104.2.

(b) Any employee of the Office served with a summons and complaint shall immediately notify, and shall deliver the summons and complaint to, the Office of the General Counsel.

(c) Any employee receiving a summons and complaint shall note on the summons and complaint the date, hour, and place of service and whether service was by hand or by mail.

(d) When a legal proceeding is brought to hold an employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the employee by law is to be served personally with process. *See Fed. R. Civ. P. 4(e)*. An employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons and complaint to the General Counsel.

(e) An employee sued personally in connection with official business may be represented by the Department of Justice at its discretion (28 CFR 50.15 and 50.16).

(f) The Office will only accept service of process for an employee in the employee's official capacity.

#### **Subpart C—Employee Testimony and Production of Documents in Legal Proceedings**

##### **§ 104.21 Scope and purpose.**

(a) This subpart sets forth the policies and procedures of the Office regarding the testimony of employees as witnesses in legal proceedings and the production

or disclosure of information contained in Office documents for use in legal proceedings pursuant to a demand.

(b) *Exceptions.* This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is to testify as an expert in connection with a particular matter in which the former employee did not participate personally while at the Office.

#### **§ 104.22 Demand for testimony or production of documents.**

(a) Whenever a demand for testimony or for the production of documents is made upon an employee, the employee shall immediately notify the Office of the General Counsel at the telephone number or addresses in § 104.2 and make arrangements to send the subpoena to the General Counsel promptly.

(b) An employee may not give testimony, produce documents, or answer inquiries from a person not employed by the Office regarding testimony or documents subject to a demand or a potential demand under the provisions of this subpart without the approval of the General Counsel. The General Counsel may authorize the provision of certified copies not otherwise available under Part 1 of this title subject to payment of applicable fees under § 1.19.

(c)(1) *Demand for testimony or documents.* A demand for the testimony of an employee under this subpart shall be addressed to the General Counsel as indicated in § 104.2.

(2) *Subpoenas.* A subpoena for employee testimony or for a document shall be served in accordance with the Federal Rules of Civil or Criminal Procedure or applicable state procedure, and a copy of the subpoena shall be sent to the General Counsel as indicated in § 104.2.

(3) *Affidavits.* Except when the United States is a party, every demand shall be accompanied by an affidavit or declaration under 28 U.S.C. 1746 or 35 U.S.C. 25(b) setting forth the title of the legal proceeding, the forum, the requesting party's interest in the legal proceeding, the reason for the demand, a showing that the desired testimony or document is not reasonably available from any other source, and, if testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony.

(d) Failure of the attorney to cooperate in good faith to enable the General

Counsel to make an informed determination under this subpart may serve as a basis for a determination not to comply with the demand.

(e) A determination under this subpart to comply or not to comply with a demand is not a waiver or an assertion of any other ground for noncompliance, including privilege, lack of relevance, or technical deficiency.

(f) *Noncompliance.* If the General Counsel makes a determination not to comply, he or she will seek Department of Justice representation for the employee and will attempt to have the subpoena modified or quashed. If Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena. In such a case, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony nor to produce the requested document. If a legal tribunal rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

#### **§ 104.23 Expert or opinion testimony.**

(a)(1) If the General Counsel authorizes an employee to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Office information, subjects, or activities except on behalf of the United States or a party represented by the United States Department of Justice.

(2) The General Counsel may authorize an employee to appear and give the expert or opinion testimony upon the requester showing, pursuant to § 104.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Office or the United States.

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding Office information, subjects, or activities, which testimony has not been approved in advance in writing in accordance with the regulations in this subpart, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by this subpart;

(ii) Request an opportunity to consult with the General Counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the tribunal conducting the proceeding then orders the employee to provide expert or opinion testimony regarding Office information, subjects, or activities without the opportunity to consult with the General Counsel, the employee shall respectfully refuse to provide such testimony, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

(c) If an employee is unaware of the regulations in this subpart and provides expert or opinion testimony regarding Office information, subjects, or activities in a legal proceeding without the aforementioned consultation, the employee shall, as soon after testifying as possible, inform the General Counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

(d) *Proceeding where the United States is a party.* In a proceeding in which the United States is a party or is representing a party, an employee may not testify as an expert or opinion witness for any party other than the United States.

#### **§ 104.24 Demands or requests in legal proceedings for records protected by confidentiality statutes.**

Demands in legal proceedings for the production of records, or for the testimony of employees regarding information protected by the confidentiality provisions of the Patent Act (35 U.S.C. 122), the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), or any other confidentiality statute, must satisfy the requirements for disclosure set forth in those statutes and associated rules before the records may be provided or testimony given.

### **Subpart D—Employee Indemnification**

#### **§ 104.31 Scope.**

The procedure in this subpart shall be followed if a civil action or proceeding is brought, in any court, against an employee (including the employee's estate) for personal injury, loss of property, or death, resulting from the employee's activities while acting within the scope of the employee's office or employment. When the employee is incapacitated or deceased, actions required of an employee should be performed by the employee's executor, administrator, or comparable legal representative.

**§ 104.32 Procedure for requesting indemnification.**

(a) After being served with process or pleadings in such an action or proceeding, the employee shall within five (5) calendar days of receipt, deliver to the General Counsel all such process and pleadings or an attested true copy thereof, together with a fully detailed report of the circumstances of the incident giving rise to the court action or proceeding.

(b)(1) An employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee only if the employee has timely satisfied the requirements of paragraph (a) of this section.

(2) No request for indemnification will be considered unless the employee has submitted a written request through the employee's supervisory chain to the General Counsel with:

- (i) Appropriate documentation, including copies of the verdict, judgment, appeal bond, award, or settlement proposal;
- (ii) The employee's explanation of how the employee was acting within the scope of the employee's employment; and
- (iii) The employee's statement of whether the employee has insurance or any other source of indemnification.

**Subpart E—Tort Claims**

**Authority:** 28 U.S.C. 2672; 35 U.S.C. 2(b)(2); 44 U.S.C. 3101; 28 CFR Part 14.

**§ 104.41 Procedure for filing claims.**

Administrative claims against the Office filed pursuant to the administrative claims provision of the Federal Tort Claims Act (28 U.S.C. 2672) and the corresponding Department of Justice regulations (28 CFR Part 14) shall be filed with the General Counsel as indicated in § 104.2.

**§ 104.42 Finality of settlement or denial of claims.**

Only a decision of the Director or the General Counsel regarding settlement or denial of any claim under this subpart

may be considered final for the purpose of judicial review.

Dated: September 6, 2001.  
**Nicholas P. Godici,**  
*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 01-22854 Filed 9-11-01; 8:45 am]  
**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**  
**[CA 249-0290a; FRL-7045-9]**

**Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and South Coast Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants and from other solvent containing materials. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on November 13, 2001 without further notice, unless EPA receives adverse comments by October 12, 2001. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

- Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.
- California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
- Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.
- South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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**I. The State's Submittal**

**A. What Rules Did the State Submit?**

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
BAAQMD .....	8-51	Adhesive and Sealant Products.	05/02/01	05/31/01
SCAQMD .....	443.1	Labeling of Materials Containing Organic Solvent.	12/05/86	06/09/87

On July 20, 2001, submitted Rule 8-51 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V,

which must be met before formal EPA review. Completeness was not required

for rules like 443.1 that were submitted prior to 1988.

### B. Are There Other Versions of These Rules?

We finalized a limited approval and limited disapproval of BAAQMD Rule 8–51 on November 4, 1999 (64 FR 60109). The limited approval portion of that rulemaking incorporated BAAQMD Rule 8–51 into the federally enforceable SIP and the limited disapproval portion of that rulemaking triggered sanctions and FIP clocks under sections 179(a) and 110(c) of the CAA. There are no previous versions of SCAQMD Rule 443.1 in the SIP. SCAQMD Rule 443.1 was originally proposed for approval on September 14, 1988 (53 FR 35528). Although we received no adverse comments, we are reproposing to approve the rule due to the length of time that has elapsed since our original action.

### C. What Is the Purpose of the Submitted Rules?

The amendments to Rule 8–51 adopted by the BAAQMD on May 2, 2001 and submitted to the EPA on May 31, 2001 were intended to address deficiencies in the version of Rule 8–51 adopted on January 7, 1998. SCAQMD Rule 443.1 was adopted to institute labeling requirements for materials containing VOCs. The TSDs have more information about these rules.

## II. EPA's Evaluation and Action

### A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available

Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The BAAQMD and SCAQMD regulate ozone nonattainment areas (*see* 40 CFR part 81), so BAAQMD Rule 8–51 and SCAQMD Rule 443.1 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's *Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants*, December 1998.

### B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

### C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 12, 2001, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 13, 2001. This will incorporate these rules into the federally enforceable SIP and will permanently terminate all sanctions and FIP clocks associated with our November 1999 action relating to Rule 8–51.

## III. Background Information

### A. Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978 .....	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988 .....	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990 .....	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–540, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991 .....	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

## IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional

requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 3, 2001.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

#### Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(173)(i)(F) and (c)(282) to read as follows:

##### § 52.220 Identification of plan.

(c) \* \* \*  
(173) \* \* \*  
(i) \* \* \*

(F) South Coast Air Quality Management District.

(1) Rule 443.1, adopted on December 5, 1986.

\* \* \* \* \*  
(282) New and amended regulations for the following APCDs were submitted on May 31, 2001, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(1) Rule 8–51, adopted on May 2, 2001.

\* \* \* \* \*

[FR Doc. 01–22736 Filed 9–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–301163; FRL–6798–2]

RIN 2070–AB70

### Bromoxynil; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of bromoxynil in or on timothy, hay and timothy, forage. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on timothy. This regulation establishes a maximum permissible level for residues of bromoxynil in these commodities. These tolerances will expire and are revoked on June 30, 2003.

**DATES:** This regulation is effective September 12, 2001. Objections and requests for hearings, identified by docket control number OPP–301163, must be received by EPA on or before November 13, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301163 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6463; and e-mail address: madden.barbara@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311  32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register—Environmental Documents**." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml/180/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml/180/Title_40/40cfr180_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301163. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available

for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the insecticide bromoxynil, 3,5-dibromo-4-hydroxybenzonitrile, in or on timothy, hay at 0.50 part per million (ppm) and timothy, forage at 0.10 ppm. These tolerances will expire and are revoked on June 30, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate

exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Bromoxynil on Timothy and FFDCA Tolerances

On May 4, 2001, the Nevada Department of Agriculture availed themselves of the authority to declare a crisis exemption for use of bromoxynil in fields planted with both timothy and alfalfa to control weeds. Very recent overplanting of aging alfalfa fields with timothy revealed a problem with weed control in that no registered herbicides are available for use on alfalfa and timothy that do not damage the other crop. Bromoxynil, which is registered for use on alfalfa, does not damage timothy. The crisis declaration was made because alfalfa growth had reached a point where applications would be ineffective if done any later in the season. EPA has authorized under FIFRA section 18 the use of bromoxynil on timothy for control of weeds in Nevada.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bromoxynil in or on timothy, hay and timothy, forage. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on timothy, hay and timothy, forage after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance

earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bromoxynil meets EPA's registration requirements for use on timothy or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bromoxynil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Nevada to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bromoxynil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

#### IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant

information in support of this action. EPA has sufficient data to assess the hazards of bromoxynil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of bromoxynil in or on timothy, hay at 0.50 ppm and timothy, forage at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

##### A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF ( $RfD = NOAEL / UF$ ). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic

Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) =  $NOAEL / \text{exposure}$ ) is calculated and compared to the LOC.

The linear default risk methodology ( $Q^*$ ) is the primary method currently used by the Agency to quantify carcinogenic risk. The  $Q^*$  approach assumes that any amount of exposure will lead to some degree of cancer risk. A  $Q^*$  is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as  $1 \times 10^{-6}$  or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ( $MOE_{\text{cancer}} = \text{point of departure} / \text{exposures}$ ) is calculated. A summary of the toxicological endpoints for bromoxynil used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BROMOXYNIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary females 13–50 years of age	NOAEL = 4 mg/kg/day UF = 100 Acute RfD = 0.04 mg/kg/day	FQPA SF = 10 aPAD = acute RfD ÷ FQPA SF = 0.004 mg/kg/day	Developmental toxicity study where bromoxynil phenol was administered to rats. LOAEL = 5 mg/kg/day based on an increased incidence of supernumerary ribs in rats from a developmental toxicity study.
Acute Dietary general population including infants and children	NOAEL = 8 mg/kg/day UF = 100 Acute RfD = 0.08 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.08 mg/kg/day	13–Week range-finding study in which bromoxynil phenol was administered orally to dogs. LOAEL = 12 mg/kg/day based on increased incidence of panting on day 1, suggestive of a compensatory reaction to the effects of the test material, which at higher doses is expressed as elevated body temperature.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BROMOXYNIL FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Chronic Dietary all populations	NOAEL= 1.5 mg/kg/day UF = 100 Chronic RfD = 0.015 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.015 mg/kg/day	12-Month chronic oral toxicity study in dogs using bromoxynil phenol as the test material. Threshold NOAEL/LOAEL of 1.5 mg/kg/day based on slightly decreased body weight gain in males. At the next higher dose level (7.5 mg/kg/day), the following effects were observed in both males and females: decreased body weight gain; increased salivation, panting, liquid feces, and pale gums; decreased erythrocytes, hemoglobin, and packed cell volume; increased urea nitrogen; and increased liver weights.
Cancer (oral, dermal, inhalation)	Bromoxynil phenol has been classified as a Group C, possible human carcinogen. A low dose extrapolation model (Q1*) is applied for quantification of human risk. Q1* = 1.03 x 10 <sup>-1</sup> (mg/kg/day) <sup>-1</sup>	10 <sup>-6</sup>	The weight-of-the-evidence determination was based primarily on results in two mouse carcinogenicity studies.

\* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

## B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.324) for the residues of bromoxynil, in or on a variety of raw agricultural commodities including alfalfa, barley, corn, flax, garlic, mint, oats, onions, rye, sorghum, wheat, and cotton. Tolerances have also been established on fat, meat, and meat-by-products of cattle, goats, hogs, horses, poultry, and sheep as well as eggs and milk. Risk assessments were conducted by EPA to assess dietary exposures from bromoxynil in food as follows.

Bromoxynil is currently registered for use on alfalfa. The aggregate risks associated with the use of bromoxynil on alfalfa have been assessed previously (Reregistration Eligibility Decision (RED) document, December 1998). No residue data are available for bromoxynil on timothy. As the use directions for timothy-alfalfa stands are the same as for alfalfa alone, the state has proposed to translate the existing residue data for alfalfa (a member of Crop Group 18, Nongrass Animal Feeds) to timothy (a member of Crop Group 17; Grass Forage, Fodder and Hay). This translation would generally not be possible as the timothy, forage tolerance would be based on 0-day preharvest interval (PHI) data whereas the PHI for alfalfa, forage is 30 days. However, as the cultural practices for timothy-alfalfa stands is the same as that for alfalfa

alone, for the emergency exemption only, the Agency is willing to translate the existing alfalfa residue data to timothy. Based upon the alfalfa residue data, the following tolerances are thus appropriate for timothy, hay at 0.50 ppm and timothy, forage at 0.10 ppm.

There are no human food items associated with timothy and therefore, the use of bromoxynil on timothy will not increase the potential for secondary residues in livestock (since the residues in timothy will not exceed those on alfalfa, a more significant feed item), the dietary risk associated with bromoxynil will not be effected by this use. The potential for residues in drinking water will not be effected as the use rate for timothy-alfalfa stands is the same as for alfalfa alone. Thus, revised risk assessments were not conducted for this action. The information discussed below was previously discussed in the December 1998 RED document.

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In 1998, an acute (probabilistic) dietary analysis including the cotton use was performed by Novigen Sciences, Inc. for Rhone Poulenc. The assessment used the consumption data from the USDA 1989–1992 nationwide Continuing Survey of Food Intakes by Individuals (CSFII).

The acute dietary risk assessment was conducted as a probabilistic risk

assessment, assuming single day exposure. In the assessment, each person-day of food consumption was matched with randomly selected residue values for this assessment from field trials submitted in support of the chemical. Percent crop treated data were included in the assessment as zeroes to account for portions of the crop to which bromoxynil was not applied. This process was repeated one thousand times for each person-day in consumption data base. The assessment assumed that the treated commodities were evenly distributed in the food supply. Secondary residues in meat and milk from consumption of treated feed items were included in the form of a probabilistic assessment, varying residues in the diet in accordance with the data from the field trials. The assumptions for the dietary exposure were reviewed and found to be acceptable. The assessments assumed that 10% of the cotton crop would be treated.

Anticipated residues in blended commodities (such as grains, cottonseed and mint oil) were used, without an adjustment for percent crop treated; however, tolerance level residues were used for onions, garlic, fat, meat by-products, and meat of cattle, goats, hogs, horses, sheep, and poultry, and eggs. Milk is a blended commodity, and therefore an anticipated residue was used.

ii. *Chronic/cancer exposure.* In conducting this chronic dietary risk

assessment the Dietary Risk Evaluation System (DRES) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Field trial residues in raw agricultural commodities (RACs) consumed by people were nondetectable; anticipated residues were based on  $\frac{1}{2}$  the limit of quantitation (LOQ), and were further refined by percent crop treated data. Field trial residues from all forages (i.e., sorghum, wheat, oat, corn, alfalfa), and all hays were averaged, and the additional refinement for percent crop treated was applied. Although forages and hays contained detectable bromoxynil residues, the averages used were significantly lower than tolerance-level residues.

The contribution of cotton gin products (gin trash) to the dietary burden for ruminants was assumed to be 5% of the diet for beef cattle and 1% for dairy cattle. It was assumed that 10% of cotton was treated. The only commodities which contribute significantly to exposure to bromoxynil and/or DBHA in the diet for the general U.S. population (or any subpopulation) are meat, milk, poultry, and eggs, based on secondary residues resulting from consumption of livestock feed items.

iii. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings:

- Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue.

- Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group.

- Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: 10% of the cereal grains (wheat, corn, oats, barley, rye, sorghum, including processed commodities) treated; 62% of onions treated; 100% garlic treated; 71% of the peppermint and spearmint treated, and 10% of the cotton treated. Refer to the December 1998 RED document for additional information.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant

subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bromoxynil may be applied in a particular area.

2. *Dietary exposure from drinking water*—i. *Ground water.* Bromoxynil octanoate does not exhibit the mobility or persistence characteristics of pesticides that are normally found in ground water. Bromoxynil phenol (which bromoxynil octanoate readily degrades to) has the potential to leach to ground water under certain conditions; however, it rapidly degrades under aerobic and anaerobic conditions reducing the likelihood of ground water contamination. Limited monitoring information for bromoxynil in ground water is available. The "Pesticides in Ground Water Database" (EPA 1992) reports sampling for bromoxynil in 107 wells in four counties in Oregon between 1985 and 1987. The well samples in each area (public water supply and domestic) were selected based on suspected vulnerability, susceptibility to contamination, and availability of information on well construction and depth. No additional information on the details of the monitoring was available. No detections of bromoxynil were reported.

Additional monitoring data from the United States Geological Survey (USGS) National Water Quality Program (NAQWA) represent the highest quality data and most recent data available (1993–1994). The program was carefully designed to obtain monitoring data for surface and ground waters from diffuse (non-point) sources. For ground water, one detection of bromoxynil (concentration not specified) was reported from a total of 2,245 samples. Clearly, these compounds (bromoxynil phenol and octanoate) are not considered candidates for restricted use due to ground water concerns and the potential for ground water contamination (and exposure) from bromoxynil is extremely low.

DBHA, a cotton metabolite, is not expected to be found in ground water.

ii. *Surface water.* Environmental fate studies indicate that bromoxynil (phenol and octanoate) should not persist in surface waters, although water monitoring data from the USGS NAWQA program show that bromoxynil has been detected in 1.1% of surface water samples. Modeled estimated environmental concentrations (EECs)

were based on the cotton use and not the small grains, corn or other uses of bromoxynil because, it has been the Agency's experience, that using cotton as opposed to these crops results in a higher estimated surface water exposure. Cotton represents the most conservative use for surface water exposure (i.e., the highest possible exposure scenario).

A Tier II analysis based on the PRZM-EXAMS model (Pesticide Root Zone Model Version 2.3 plus Exposure Analysis Modeling System Version 2.94) was conducted for the cotton use. PRZM-EXAMS uses data on the physical-chemical properties of the pesticide plus soil and topographic characteristics, weather data, and water quality parameters for the modeled site. The model uses this information to estimate runoff from a 10 hectare agricultural field into an immediately adjacent 1 hectare by 2 meter deep pond. PRZM-EXAMS considers reduction in dissolved pesticide concentrations due to adsorption of pesticide to soil or sediment, incorporation, degradation in soil before wash off to a water body, direct deposition of spray drift into the water body, and degradation of the pesticide within the water body.

Water monitoring data from the USGS NAWQA Program were reported during the 1993–1995 period from 7 of 20 river basins throughout the U.S. The NAWQA Program examined drainage basins that were primarily agricultural use. The percentage of detections was 1.1% from a total of 1,925 surface water samples. Analysis of the 20 detections >0.03 parts per billion (ppb) yielded a median value of 0.105 ppb with a mean of 0.53 ppb. The maximum concentration was one data point at 6.1 ppb (12.2 ppb when accounting for 50% recovery) measured in the South Platte River Study Unit, CO. For urban land use, bromoxynil was not detected in surface waters. It is important to note the laboratory recoveries were approximately 50%. Apparently the laboratory recoveries did not vary considerably from the 50% level.

Based on model estimates (using PRZM-EXAMS), the maximum or peak estimated concentration for bromoxynil was 12.3 ppb and the maximum estimated long-term mean was 0.24 ppb (using 36 years of weather data). These values represent what might be expected in a small water body near a cotton field highly prone to runoff. The maximum peak estimated concentration for bromoxynil from the model correlates with the highest value detected in the USGS monitoring data, when this measured value has been

corrected for an analytical recovery rate of 50%.

To estimate a reasonable high end exposure for the human health risk assessment, EPA focused on the calculated time-weighted annual mean concentrations of bromoxynil at each of 11 USGS monitoring sites, which the EPA views as located in watersheds likely to have bromoxynil use. (These values were not corrected for the analytical recovery rate of 50%.) These time-weighted annual mean concentrations ranged from 0.011 ppb to 0.18 ppb, with 10 out of the 11 sites with time-weighted annual mean concentrations below 0.05 ppb. Six of the 10 sites had time weighted annual mean concentrations at or below 0.014 ppb. The highest annual time-weighted mean (0.18 ppb) was located in a relatively small watershed (approximately 100 square miles) in a relatively small water body, and the calculated annual mean value at this site was significantly influenced by the presence of a single high value (the highest value found in all of the available monitoring data). Based on this information, EPA believes that 0.05 ppb is a reasonable high end estimate for purposes of estimating drinking water exposure.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Bromoxynil is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether bromoxynil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bromoxynil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bromoxynil has a common mechanism of toxicity with other substances. For information regarding

EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

### C. Safety Factor for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

The bromoxynil data submitted to the Agency for review are sufficient for the assessment of hazard to the developing organism. A total of 11 developmental and 3 reproductive toxicity studies were available for review. These include oral prenatal developmental toxicity studies (three in rats, two in rabbits, and one in mice with the phenol; one in rats with the octanoate), dermal prenatal developmental toxicity studies (one each in rats and rabbits with both the phenol and the octanoate), and two dietary two-generation reproduction studies in rats (one with the phenol; one with the octanoate) and one dermal reproduction study. Developmental toxicity was observed, following *in utero* exposure to bromoxynil, in multiple studies, by two routes of exposure, and in three species. The induction of supernumerary ribs was shown to be the most sensitive indicator of developmental toxicity in fetal rats, mice, and (in certain studies) rabbits. Upon consideration of the data base in its entirety, the Agency determined that the developmental NOAEL, for the induction of supernumerary ribs, resulting from prenatal exposure to bromoxynil (phenol) is 4 mg/kg/day via the oral route and 10 mg/kg/day via the dermal route. The developmental LOAELs for bromoxynil phenol were 5 mg/kg/day by the oral route and 50 mg/kg/day by the dermal route. Other forms of developmental toxicity, including resorptions and malformations, were routinely observed in bromoxynil studies at higher dose levels.

It was determined that the FQPA safety factor should be retained for the subpopulation consisting of females 13+ for acute dietary exposures. This

decision was based upon concerns emanating from the toxicological profile, including evidence of increased susceptibility of fetuses to bromoxynil exposure, the steep dose response curve, and the demonstrated severe developmental effects at doses above the LOAEL.

The population of concern is the developing fetus and the endpoint of concern is supernumerary ribs. This endpoint, a developmental anomaly, results from *in utero* exposure; therefore the population subgroup of concern is females 13+ years old. Although some

systems in infants and children continue developing, it is unlikely that supernumerary ribs, even though observed across multiple species, would result from postnatal exposure. A 10-fold safety factor, as required by FQPA, will provide additional protection for infants and children and ensure a reasonable certainty of no harm to this sensitive subpopulation.

#### *D. Aggregate Risks and Determination of Safety*

1. *Acute risk.* Using the exposure assumptions discussed in this unit for

acute exposure and dietary exposure from drinking water, the acute aggregate exposure from food and water to bromoxynil will occupy <1% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 2% of the aPAD for all infants and 2% of the aPAD for children 1–6 years old. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO BROMOXYNIL

Population Subgroup	aPAD (mg/kg)	Estimated Exposure from Food (mg/kg bw/day)	Estimated Exposure from Water (mg/kg/day)	% aPAD (Food and Water)
U.S. population	0.08	0.000137	0.00035	<1%
Females 13+ years	0.004	0.000082	0.00035	11%
Children (1–6 years old)	0.08	0.000288	0.0012	2%
All infants	0.08	0.000219	0.0012	2%

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure and dietary exposure from drinking water, EPA has concluded that exposure to bromoxynil from food and water will utilize <1% of

the cPAD for the U.S. population, <1% of the cPAD for all infants, and <1% of the cPAD for children 1–6 years old. There are no residential uses for bromoxynil that result in chronic residential exposure to bromoxynil.

Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BROMOXYNIL

Population Subgroup	cPAD (mg/kg)	Estimated Exposure from Food (mg/kg bw/day)	Estimated Exposure from Water (mg/kg/day)	% cPAD (Food and Water)
U.S. population	0.015	0.000015	0.0000014	<1%
Females 13+ years	0.015	0.000012	0.0000016	<1%
Children (1–6 years old)	0.015	0.000032	0.000005	<1%
All Infants	0.015	0.000036	0.000005	<1%

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Bromoxynil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Bromoxynil is not registered for use on

any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* Using the exposure assumptions described in this unit for chronic/cancer exposure and dietary exposure from drinking water, EPA has concluded that exposure to bromoxynil from food and water resulted in an estimated aggregate cancer risk to the U.S. population of  $1.7 \times 10^{-6}$ . Bromoxynil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate

cancer risk is the sum of the risk from food and water only.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to bromoxynil residues.

#### **V. Other Considerations**

##### *A. Analytical Enforcement Methodology*

Adequate analytical methodology is available for data collection and tolerance enforcement for bromoxynil per se in plants. Method I in PAM, Vol. II, is a GLC/MCD that has undergone a successful EPA method validation on

wheat grain. This method involves alkaline hydrolysis in methanolic KOH to convert residues to bromoxynil, cleanup by liquid-liquid partitioning, methylation using diazomethane, further cleanup on a Florisil column, and determination by GLC/MCD. Method Ia is the same method, but uses GC/ECD for determination of methylated bromoxynil.

Method A is a GC/MCD or ECD method for the analysis of bromoxynil residues in livestock tissues and is essentially the same as Method I. Method B is a GC/ECD method that is also similar to Method I, with modifications to the cleanup procedures.

#### B. International Residue Limits

There are no established or proposed Codex maximum residue levels for bromoxynil residues; no compatibility questions exist with respect to U.S. tolerances and Codex.

### VI. Conclusion

Therefore, the tolerance is established for residues of bromoxynil, 3,5-dibromo-4-hydroxybenzonitrile, in or on timothy, hay at 0.50 ppm and timothy, forage at 0.10 ppm.

### VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

#### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301163 in the subject line on the first page of your submission. All

requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 13, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources

and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-301163, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

#### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule

directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. Because this rule has been exempted from review under Executive Order 11866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

**IX. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2001.

**Peter Caulkins,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.324 is amended by adding text to paragraph (b) to read as follows:

**§ 180.324 Bromoxynil, tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the insecticide bromoxynil, 3,5-dibromo-4-hydroxybenzotrile in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the date specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Timothy, hay .....	0.50 ppm	6/30/03
Timothy, forage .....	0.10 ppm	6/30/03

\* \* \* \* \*

[FR Doc. 01-22526 Filed 9-11-01; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[OPP-301161; FRL-6797-5]

RIN 2070-AB78

**Fludioxonil; Pesticide Tolerances for Emergency Exemptions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile) in or on pomegranates. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pomegranates. This regulation establishes a maximum permissible level for residues of fludioxonil in this food commodity. The tolerance will expire and is revoked on June 30, 2003.

**DATES:** This regulation is effective September 12, 2001. Objections and requests for hearings, identified by docket control number OPP-301161, must be received by EPA on or before November 13, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP-301161 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308-9367; and e-mail address: ertman.andrew@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311  32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_180/Title\\_40/40cfr180\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html), a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-301161. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes

printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile), in or on pomegranates at 5.0 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2003. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable

certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

### III. Emergency Exemption for Fludioxonil on Pomegranates and FFDCA Tolerances

Losses due to *Botrytis* have increased dramatically over the course of the last 2 years for pomegranate growers and packers. In the 1999 and 2000 packing seasons, growers and packers experienced approximately a 20% loss of fruit after packing for the fresh market due to *Botrytis* mold and had never experienced such frequency of decay before. Previously, they had been able to hold pomegranates for 2 to 3 months, but now have difficulties storing much beyond 2 to 3 weeks. EPA has authorized under FIFRA section 18 the use of fludioxonil on pomegranates for control of gray mold (*Botrytis cinerea*) in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fludioxonil in or on pomegranates. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6). Although this tolerance will expire and is revoked on June 30, 2003, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on pomegranates after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not

exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether fludioxonil meets EPA's registration requirements for use on pomegranates or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of fludioxonil by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fludioxonil, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

### IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL-5754-7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of fludioxonil in or on pomegranates at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

#### A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes

used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA safety factor.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q\*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q\* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q\* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as  $1 \times 10^{-6}$  or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ( $\text{MOE}_{\text{cancer}} = \text{point of departure/exposures}$ ) is calculated. A summary of the toxicological endpoints for fludioxonil used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR FLUDIOXONIL FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF and LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (females 13–50 years of age)	NOAEL = 100 mg/kg/day UF = 100 Acute RfD = 1.0 mg/kg/day	FQPA SF = 1X aPAD = acute RfD ÷ FQPA SF = 1.0 mg/kg/day	Developmental toxicity study - rat Developmental LOAEL = 1,000 mg/kg/day based on increased incidence of fetuses and litters with dilated renal pelvis and dilated ureter
Chronic dietary (all populations)	NOAEL = 3.3 mg/kg/day UF = 100 Chronic RfD = 0.03 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD ÷ FQPA SF = 0.03 mg/kg/day	1 Year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-term dermal (1–7 days) (occupational/residential)	none	No systemic toxicity was seen at the limit dose (1,000 mg/kg/day) in the 28-day dermal toxicity study in rats. This risk assessment is not required.	Endpoint was not selected
Intermediate-term (1 week - several months) dermal (occupational/residential)	Oral study NOAEL = 64 mg/kg/day (dermal penetration = 40%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Long-term (several months-lifetime) dermal (occupational/residential)	Oral study NOAEL = 3.3 mg/kg/day (dermal penetration = 40%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	1 Year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Short-term (1–7 Days) inhalation (occupational/residential)	NOAEL = 64 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Intermediate-term (1 week - several months) inhalation (occupational/residential)	NOAEL = 64 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	13 Week Oral Feeding Study - rat Systemic LOAEL = 428 mg/kg/day based on decreased body weight gain in both sexes, chronic nephropathy in males, and centrilobular hepatocyte hypertrophy in females
Long-term (several months-lifetime) inhalation (occupational/residential)	NOAEL = 3.3 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential)	1 Year chronic toxicity study - dog LOAEL = 35.5 mg/kg/day based on decreased weight gain in female dogs
Cancer (oral, dermal, inhalation)	"Group D"- not classifiable as to human carcinogenicity via relevant routes of exposure	Not applicable	Acceptable oral rat and mouse carcinogenicity studies; evidence of carcinogenic and mutagenic potential.

### B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.516) for the residues of fludioxonil, in or on a

variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-

use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food

consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For the acute DEEM™ analysis (version 7.72), published and proposed tolerances level residues were used. Default processing factors and 100% crop treated (CT) were assumed for all commodities.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment, the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic DEEM™ analysis (version 7.73), published and proposed tolerances level residues were used. Default processing factors and 100% CT were assumed for all commodities.

iii. *Cancer.* Fludioxonil has been put in “Group D”—not classifiable as to human carcinogenicity via relevant routes of exposure and therefore this risk assessment is not required.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for fludioxonil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of fludioxonil.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for

the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to fludioxonil they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models, the EECs of fludioxonil for acute exposures are estimated to be 46 parts per billion (ppb) for surface water and 0.35 ppb for ground water. The EECs for chronic exposures are estimated to be 11 ppb for surface water and 0.35 ppb for ground water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fludioxonil is not currently registered for residential (outdoor, non-food) uses, however, the registrant is seeking registration for the use of fludioxonil by commercial applicators on residential lawns. For adults, post-application exposures may result from dermal contact with treated turf. For toddlers, dermal and non-dietary oral post-application exposures may result from dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available

information” concerning the cumulative effects of a particular pesticide's residues and “other substances that have a common mechanism of toxicity.”

EPA does not have, at this time, available data to determine whether fludioxonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fludioxonil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

#### C. Safety Factor for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Developmental toxicity studies.* In the rat developmental study, the maternal (systemic) NOAEL was 100 mg/kg/day, based on reduction in mean body weight gain in dams during gestation period at the LOAEL of 1,000 mg/kg/day. The developmental (fetal) NOAEL was 100 mg/kg/day, based on increased fetal and litter incidence of dilated renal pelvis and dilated ureter at the LOAEL of 1,000 mg/kg/day. In the rabbit developmental toxicity study, the maternal (systemic) NOAEL was 10 mg/kg/day, based on decreased body weight gains and food efficiency at the LOAEL of 100 mg/kg/day. The developmental (pup) NOAEL was 300 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 22.13 mg/kg/day (males)

and 24.24 mg/kg/day (females), based on clinical signs and decreased body weight, body weight gain and food consumption at the LOAEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females). The reproductive/developmental (pup) NOAEL was 22.13 mg/kg/day (males) and 24.24 mg/kg/day (females), based on reduced pup weights at the LOAEL of 221.6 mg/kg/day (males) and 249.7 mg/kg/day (females).

*iv. Prenatal and postnatal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for fludioxonil is complete with respect to current data requirements. There are no prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study.

*v. Conclusion.* EPA concludes that reliable data support the removal of the additional uncertainty factor; the standard hundred-fold uncertainty factor is adequate to protect the safety of infants and children.

#### *D. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water.

DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to fludioxonil in drinking water (when considered along with other sources of exposure for which OPP has reliable

data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of fludioxonil on drinking water as a part of the aggregate risk assessment process.

*1. Acute risk.* Because the acute endpoint applies to one population subgroup, females (13–50 years old), the acute risk assessment was conducted only for this group. An acute dose and endpoint were not selected for the U.S. population (including infants and children) because there were no effects of concern observed in oral toxicology studies, including maternal toxicity in the developmental toxicity studies in rats and rabbits, that are attributable to a single exposure (dose).

Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to fludioxonil will occupy 0.7% of the aPAD for females (13–50 years old). In addition, despite the potential for acute dietary exposure to fludioxonil in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of fludioxonil in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUDIOXONIL

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
Females (13–50 years old)	1.0	0.7	46	0.35	30,000

*2. Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to fludioxonil from food will utilize 5.5% of the cPAD for the U.S. population, 22% of the cPAD for all infants <1 year old) and 14% of the

cPAD for children 1 to 6 years old. Based on the use pattern, chronic residential exposure to residues of fludioxonil is not expected. In addition, despite the potential for chronic dietary exposure to fludioxonil in drinking water, after calculating DWLOCs and

comparing them to conservative model of EECs fludioxonil in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUDIOXONIL

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.03	5.5	11	0.35	990
All infants (<1 year old)	0.03	22	11	0.35	230
Children (1 to 6 years old)	0.03	14	11	0.35	260

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO FLUDIOXONIL—Continued

Population Subgroup	cPAD mg/ kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
Children (7 to 12 years old)	0.03	8.2	11	0.35	280
Females (13–50 years old)	0.03	3.8	11	0.35	870
Males (13–19 years old)	0.03	3.2	11	0.35	1,000
Males (20+ years old)	0.03	3.5	11	0.35	1,000
Seniors (55+ years old)	0.03	5.1	11	0.35	1,000

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fludioxonil is not currently registered for residential (outdoor, non-food) uses, however, the registrant is seeking registration for the use of fludioxonil by commercial applicators on residential lawns. For adults, post-application exposures may result from dermal contact with treated turf. For toddlers, dermal and non-dietary oral post-application exposures may result from

dermal contact with treated turf as well as hand-to-mouth transfer of residues from turfgrass.

For the U.S. population and all infants (<1 year old) population subgroups, the total food and residential short-term aggregate MOEs are 1,900 and 995, respectively. As these values are greater than 100, the short-term food and residential aggregate risks for the U.S. population and all infants (<1 year old) population subgroups are below the Agency's level of concern. Because the all infants (<1 year old) population subgroup has the highest exposure to

fludioxonil residues from dietary sources, including all infants (<1 year old) is adequately protective of the children 1–6 and 7–12 years old population subgroups.

In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of fludioxonil in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO FLUDIOXONIL

Population Subgroup	Aggregate MOE (Food + Residen- tial)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	1,900	100	11	0.35	21,000
All infants (<1 year old)	995	100	11	0.35	5,800

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Though residential exposure could occur with the use of fludioxonil, no residential exposure scenarios for fludioxonil are expected to have intermediate-term durations. Therefore, an intermediate-term aggregate risk assessment is not required.

5. *Aggregate cancer risk for U.S. population.* Fludioxonil has been put in "Group D"—not classifiable as to human carcinogenicity via relevant routes of exposure and therefore this risk assessment is not required.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to fludioxonil residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305-5229; e-mail address: furlow.calvin@epa.gov.

### B. International Residue Limits

There are no CODEX, Canadian, or Mexican Maximum Residue Limits (MRLs) for fludioxonil on pomegranates.

## VI. Conclusion

Therefore, the tolerance is established for residues of fludioxonil, (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile), in or on pomegranates at 5.0 ppm.

## VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-301161 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 13, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260-4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305-

5697, by e-mail at [tompkins.jim@epa.gov](mailto:tompkins.jim@epa.gov), or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by the docket control number OPP-301161, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov). Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

### B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

### VIII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types

of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under FFDCA section 408, such as the [tolerance/exemption] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of

power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

For these same reasons, the Agency has determined that this rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.”

Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final

rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 14, 2001.

Peter Caulkins, Acting

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

2. Section 180.516 is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

\* \* \* \* \*

(b) \* \* \*

Commodity	Parts per million	Expiration/revocation date
Pomegranate	5.0	6/30/03

\* \* \* \* \*

[FR Doc. 01–22524 Filed 9–11–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 422

[CMS–1160–F]

RIN 0938–AK41

Medicare Program; Requirements for the Recredentialing of Medicare+Choice Organization Providers

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the requirement for recredentialing providers who are physicians or other health care professionals for

Medicare+Choice Organizations (M+COs) from at least every 2 years to at least every 3 years. This change is consistent with managed care industry recognized standards of practice and quality, and with standards already adopted by nationally recognized private quality assurance accrediting organizations. This change simplifies administrative requirements by retaining consistency with the private accrediting processes. This rule benefits M+COs and providers within the M+COs who must be recredentialed, while continuing to address quality issues of Medicare beneficiaries.

**DATES:** The effective date of this rule is October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Siera Gollan, (410) 786–6664.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1851 through 1859 of the Social Security Act (the Act) established Part C of the Medicare program, known as the “Medicare+Choice (M+C) Program.” On June 26, 1998, we

published a comprehensive interim final rule (63 FR 34968) in the **Federal Register** to implement the M+C Program. That interim final rule set forth the M+C regulations in 42 CFR Part 422—Medicare+Choice Program. We published a subsequent final rule with comment period in the **Federal Register** on June 29, 2000 (65 FR 40170).

When these rules were promulgated, we established a 2-year recredentialing cycle consistent with standards adopted by nationally recognized private quality assurance accrediting organizations. Under § 422.204(b)(2)(ii), Medicare+Choice Organizations (M+COs) are required to recredential providers who are physicians or other health care professionals (including members of physicians groups) at least every 2 years. The recredentialing updates information obtained during initial credentialing, considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollment satisfaction surveys,

and other plan activities, and includes an attestation of the correctness and completeness of the new information.

Since the promulgation of these M+C rules, however, the nationally recognized private quality assurance accrediting organizations' standards for recredentialing have changed to a 3-year cycle. Therefore, our regulations are no longer consistent with standards adopted by these organizations. We believe that the change in the standards for recredentialing from a 2-year cycle to a 3-year cycle is appropriate because it lessens the administrative burdens on M+COs and their providers without negatively affecting Medicare beneficiaries or the Medicare program.

On December 27, 2000, we published a proposed rule in the **Federal Register** (65 FR 81813) proposing to change the requirement for the recredentialing of providers who are physicians or other health care professionals for M+COs in § 422.204(b)(2)(ii) from at least a 2-year cycle to at least a 3-year cycle. The proposed change to the regulation still allowed for M+COs to recredential their providers on a 2-year cycle if they wished to do so.

## II. Analysis of, and Responses to, Public Comments on the Proposed Rule

We received 8 timely comments in response to the December 27, 2000 proposed rule. The majority of the comments were from health plans and credentials verification organizations. We reviewed each commenter's letter and grouped like or related comments. Some comments were identical, indicating that the commenters had submitted form letters. The comments and our responses are summarized below.

### A. Change the Recredentialing Requirement From at Least Every 2 Years to at Least Every 3 Years

*Comment:* The majority of commenters expressed their support of changing the recredentialing cycle for M+COs from at least every 2 years to at least every 3 years. They stated that the change will decrease administrative costs and result in consistency with private accrediting organizations, while at the same time maintaining the level of quality necessary to adequately protect Medicare beneficiaries.

*Response:* We appreciate the support of these commenters. This change will make our regulations consistent with the recredentialing standards adopted by nationally recognized private quality assurance accrediting organizations. We agree that it will lessen the administrative burdens on M+COs and their providers without negatively

affecting Medicare beneficiaries or the Medicare program.

*Comment:* One commenter pointed out that the proposed rule modified § 422.204(b)(2)(ii) by omitting several words in the explanation of the purpose of recredentialing. The commenter agreed with the move from at least every 2 years to at least every 3 years, but suggested that the final rule otherwise retain the existing regulatory language.

*Response:* Our purpose for making minor editorial changes to the language was not to change the intent of the rule, but to make the language clearer. The recredentialing process does the following:

- Updates information obtained during initial credentialing.
- Considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, and other plan activities.
- Includes an attestation of the correctness and completeness of the new information.

We understand the commenter's concern with the regulations text in the proposed rule and we have changed the text in this final rule to more accurately distinguish between the three components of recredentialing above.

*Comment:* Several commenters, representing credentials verification organizations (CVOs), expressed concern about moving from a 2-year to a 3-year recredentialing cycle. These commenters cited risk management issues, such as protecting their patients from harm, on the part of the M+COs.

These commenters also stated that timely and thorough recredentialing practices ensure quality health care, while reducing the risk to health plans and reducing the probability of medical errors and substandard care. They stated that there is no definitive research showing that moving to a 3-year cycle is in the best interest of the public (pointing out that of the 32 states that require recredentialing, 12 require recredentialing every 2 years while only eight require it every 3 years), and they believe that most M+COs will choose to implement the 3-year recredentialing cycle, even though we allow them to accept a more stringent standard.

*Response:* The M+CO must assess any possible risks, including risk management issues, of implementing any standards in their own organizations. Since the regulation still allows for more frequent recredentialing of providers, it is the decision of the M+CO whether to implement the 3-year recredentialing cycle. We believe that,

as a national policy, risk management will not be negatively effected by a 3-year recredentialing cycle.

We agree that timely and thorough recredentialing is necessary to ensure quality health care, reduce risk to health plans and members, and reduce the probability of medical errors and substandard care. However, we agree with the nationally recognized private quality assurance accrediting organizations who have determined that these factors are not compromised by moving from a 2-year recredentialing cycle to a 3-year recredentialing cycle. If a State law requires a more stringent recredentialing cycle for M+CO providers, the State law supercedes our 3-year requirement.

### B. Miscellaneous Comments

*Comment:* Several commenters expressed the need for a form of interim monitoring of providers credentials including licensure, querying the National Practitioner Data Bank (NPDB), and sanction activity.

*Response:* We currently require interim monitoring in several ways. We require that all M+CO's monitor the Medicare and Medicaid sanction list published by the Office of the Inspector General as frequently as that list is published (monthly). We also require resolution and documentation of any member complaint or grievance. The M+CO is also prohibited from contracting with providers who opt out of Medicare. In addition to accessing the NPDB, M+COs are encouraged to query the Healthcare Integrity and Protection Data Bank (HIPDB). M+COs are also permitted to establish their own interim monitoring procedures, in order to ensure that unqualified providers are not providing care to Medicare beneficiaries.

*Comment:* One commenter suggested that we try to simplify and standardize credentialing requirements. The commenter suggested establishing a centralized credentialing provider databank and "perpetual" verifications, outside of the NPDB.

*Response:* Although this request is outside the scope of this regulation, we, in conjunction with other organizations, are in the process of exploring the possibility of having a centralized data bank for provider credentials.

*Comment:* One commenter suggested that we align our credentialing standards with those of the National Committee for Quality Assurance (NCQA). This commenter believes that a meaningful reduction in administrative burden is dependent upon comprehensive standardization. This commenter also believed that aligning

standards with the NCQA standards would not compromise the rigorous standards currently required through the Quality Improvement System for Managed Care standards. Another commenter suggested that we accept a form of provisional credentialing to remain consistent with NCQA.

*Response:* Although this request is not directly related to this regulation, we are currently re-examining all of our standards related to provider credentialing. We are assessing standards that are implemented by private accrediting organizations and evaluating the applicability of those standards to the Medicare program.

### III. Provisions of This Final Regulation

This final rule incorporates the 3-year recredentialing cycle of the proposed rule. As discussed in section II of this preamble, we believe the requirement of a 3-year recredentialing cycle for providers who are physicians or other health care professionals for M+COs is consistent with industry standards and continues to ensure high quality care for Medicare beneficiaries.

We have made a minor editorial change to the language describing what recredentialing includes, but have not changed the substance or the intent of this language from the current regulation or the proposed rule.

### IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 422.204 (Provider selection and credentialing) requires recredentialing at least every 3 years

that updates information obtained during initial credentialing, considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, and other plan activities, and includes an attestation of the correctness and completeness of the new information. While the criteria and timing of the recredentialing process is currently approved under OMB control number 0938-0753, the general recredentialing criteria of every 2 years is being revised to every 3 years.

If you comment on the information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Room N2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

### V. Regulatory Impact Statement

#### A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Public Law 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$110 million or more in any 1 year). This rule is not a major rule, as there are no additional costs to implement the one change that results from this final rule. Since the rule changes the recredentialing requirement from a 2-year to a 3-year cycle, it decreases administrative costs for the health plan and the providers within the health plan.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and

government agencies. Most hospitals (and most other providers and suppliers) are small entities, either by nonprofit status or by having revenues of \$5 million to \$25 million or less annually (see 66 FR 69432). For purposes of the RFA, some M+COs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million. This rule will not have an effect on State, local, or tribal governments, nor will the rule meet the \$100 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule does not impose any direct requirement costs on State or local governments.

#### B. Anticipated Effects

##### 1. Effects on M+COs

The effect on M+COs will be to lessen the mandated recredentialing requirements to at least once every 3 years rather than the current requirement of at least once every 2 years. If the rule is not promulgated, Medicare M+COs would be required to recredential on a schedule that is different and more demanding for Medicare contractors than private contractors, adding an administrative complexity and cost without benefit. M+COs can maintain recredentialing more often at their option; this change simply addresses consistency with standards of private accreditation agencies.

## 2. Effects on Other Providers

Effects on other providers are limited, except that providers in M+COs will not be required to provide credentialing material at a greater frequency than they are required to provide it by the private accreditation agencies and the M+COs' individual corporate requirements.

## 3. Effects on the Medicare and Medicaid Programs

This rule makes no change to the Medicaid program. The rule simplifies the recredentialing mandated cycle for consistency with the private accreditation processes for Medicare M+COs. If the rule is not promulgated, a cycle inconsistent with the private accreditation organizations will require private accreditation organizations to change their cycle in order to be deemed for Medicare and require M+COs and their providers to undergo an additional administrative cost and process without identified benefit to Medicare beneficiaries or the Medicare program.

### C. Alternatives Considered

The only other alternative would be to leave the regulation unchanged. To meet our goal to be consistent, when appropriate, with the standards of the private accreditation organizations, we decided that the change is necessary.

### D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule does not have a significant economic impact on a substantial number of small entities, or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

### List of Subjects Affected in 42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

### PART 422—MEDICARE+CHOICE PROGRAM

1. The authority citation for part 422 is revised to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Revise § 422.204(b)(2)(ii) to read as follows:

#### § 422.204 Provider selection and credentialing.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Recredentialing at least every 3 years that updates information obtained during initial credentialing, considers performance indicators such as those collected through quality assurance programs, utilization management systems, handling of grievances and appeals, enrollee satisfaction surveys, and other plan activities, and that includes an attestation of the correctness and completeness of the new information; and

\* \* \* \* \*

**Authority:** Secs. 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w-21 through 1395w-27, and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 7, 2001.

**Thomas A. Scully,**  
Administrator, Centers for Medicare & Medicaid Services.

Dated: September 7, 2001.

**Tommy G. Thompson,**  
Secretary.  
[FR Doc. 01-22915 Filed 9-11-01; 8:45 am]  
BILLING CODE 4120-01-P

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 01-2055; MM Docket No. 01-89; RM-10094]

#### Television Broadcasting Services; Decatur, Plano, TX.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule, dismissal.

**SUMMARY:** The Commission dismisses a petition for rule making filed by Word of God Fellowship, Inc. ("petitioner"), requesting the reallocation of Television Channel 29 from Decatur to Plano, Texas as the community's first local transmission service. Petitioner filed no comments in response to the Notice of Proposed Rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-89 adopted August 22, 2001 and released August 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Federal Communications Commission.

**John A. Karousos,**  
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-22834 Filed 9-11-01; 8:45 am]

BILLING CODE 6712-01-U

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 001121328-1041-02; I.D. 111500C]

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 2001 Summer Flounder, Scup, and Black Sea Bass Commercial Quotas

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Commercial quota adjustment; correction.

**SUMMARY:** NMFS publishes corrected adjustments to the 2001 commercial quotas for summer flounder, scup, and black sea bass. This action is necessary to comply with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which specify that any summer flounder landings in excess of or less than a given state's individual 2000 commercial quota be deducted from or added to that state's quota for 2001. For scup and black sea bass, the FMP specifies that landings in excess of a quota for a given period or quarter be deducted from the quota for the same period or quarter in the following year. The intent of this

action is to use the most accurate landings data to make adjustments to a state's annual quota and to correct errors in previous quota adjustments to provide fishermen the opportunity to harvest the quota available without harvesting fish in excess of the quota and requiring reduced catches in future quotas.

**DATES:** Effective September 7, 2001, through December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fisheries Policy Analyst, (978) 281-9273, fax (978) 281-9135, e-mail paul.h.jones@noaa.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

At 66 FR 12902, March 1, 2001, and at 66 FR 16151, March 23, 2001, NMFS published final specifications for the 2001 scup and black sea bass; and summer flounder, fisheries, respectively, which included preliminary 2000 landings and 2001 quota adjustments. Further adjustments are made to the 2001 quotas through this notification, to account for audited 2000 summer flounder, scup, and black sea bass landings data from the states and for inadvertent errors in the preliminary 2000 quota adjustments.

##### Summer Flounder

The 2000 quota, reported 2000 landings, and the resulting 2000 overages and underages for all states for summer flounder are given in corrected summer flounder Table 2 in this document. The following states recorded 2000 landings of summer flounder that differ from those reported in the March 23, 2001, final rule, by the following amounts: MA, -1,506 lb (683 kg); RI, +9,310 lb (4,223 kg); CT, +5,520 lb (2,504 kg); NY, -37,048 lb (16,805 kg); NJ, -305,513 lb (138,578 kg); MD, -9,456 lb (4,289 kg); and VA, -19,477 lb (8,835 kg). While the State of NC reported additional landings, this action makes no quota adjustments because it is forbidden by a Court Order (*North Carolina Fisheries Association v. Evans*, July 30, 2001).

The resulting corrected and adjusted 2001 commercial quota for each state is given in corrected summer flounder Table 3 of this document.

##### Scup

The 2000 quotas (by period), reported 2000 landings (by period) and resulting overages for scup for all periods are given in corrected scup Table 2 of this document. Changes in 2000 landings from those reported in the March 1, 2001, final rule are as follows: Winter I, +17,661 lb (8,011 kg); Summer, +19,029 lb (8,631 kg); and Winter II, -357 lb (162

kg). This information resulted in total overages and resulting decreases to the 2001 Winter I and Summer quotas by 346,999 lb (157,396 kg) and 602,340 lb (273,217 kg), respectively.

The resulting adjusted 2001 quota for each period is given in corrected scup Table 3 of this document.

##### Black Sea Bass

The 2000 quotas (by quarter), reported 2000 landings (by quarter) and resulting overages for black sea bass for all quarters are given in corrected black sea bass Table 5 of this document. Changes in 2000 landings from those reported in the March 1, 2001, final rule are as follows: Quarter 1, -555 lb (252 kg); Quarter 2, +33,577 lb (15,230 kg); Quarter 3, -35,027 lb (15,888 kg); and Quarter 4, -58,292 lb (26,441 kg). This information resulted in total overages and resulting decreases to the 2001 Quarter 2, 3, and 4 quotas by 239,098 lb (108,453 kg), 61,049 lb (27,691 kg), and 22,760 lb (10,324 kg), respectively.

The resulting adjusted 2001 quota for each quarter is given in corrected black sea bass Table 6 of this document.

##### Corrections

1. In the document published at 66 FR 16151, March 23, 2001, the following corrections are made:

On page 16153, Tables 2 and 3 are revised in their entirety as follows:

TABLE 2. SUMMER FLOUNDER PRELIMINARY 2000 LANDINGS BY STATE

State	2000 Quota <sup>1</sup>		Preliminary 2000 landings		2000 Overages and Underages <sup>3</sup>	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
ME	3,956	1,794	6,922	3,140	2,966	1,345
NH	51	23	0	0	(51) <sup>3</sup>	(23) <sup>3</sup>
MA	703,136	318,937	788,998	357,883	85,862	38,946
RI	1,742,566	790,415	1,703,593	772,737	(38,973) <sup>3</sup>	(17,678) <sup>3</sup>
CT	244,085	110,715	245,148	111,197	(1,063)	(482)
NY	849,672	385,405	836,936	379,628	(12,736) <sup>3</sup>	(5,777) <sup>3</sup>
NJ	1,794,299	813,880	1,848,119	838,293	53,820	24,412
DE	(31,303) <sup>4</sup>	(14,199) <sup>4</sup>	12,317	5,587	43,620	19,786
MD	226,568	102,770	251,751	114,192	25,183	11,423
VA	2,293,410	1,040,273	2,206,715	1,000,949	(86,695) <sup>3</sup>	(39,324) <sup>3</sup>
NC	3,049,560	1,383,257	3,347,841 <sup>5</sup>	1,518,555	298,281	135,298
Total	10,876,000	4,933,271	11,248,340	5,102,161		

<sup>1</sup>Reflects quotas as published on December 29, 2000 (65 FR 82945).

<sup>2</sup>Kilograms as converted from pounds and may not add to the converted total due to rounding.

<sup>3</sup>Numbers in parentheses are underages.

<sup>4</sup>Parentheses indicate a negative number.

<sup>5</sup>State of NC reports that 3,386,578 lb were landed; further quota adjustment forbidden by Court Order

TABLE 3. SUMMER FLOUNDER FINAL 2001 ADJUSTED QUOTAS

State	2000 Initial quota		2001 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
ME	5,112	2,319	2,146	973
NH	49	22	100	45
MA	733,031	332,497	647,169	293,551
RI	1,685,534	764,545	1,724,507	782,223

TABLE 3. SUMMER FLOUNDER FINAL 2001 ADJUSTED QUOTAS—Continued

State	20001 Initial quota		2001 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
CT	242,580	110,032	241,517	109,550
NY	821,863	372,791	834,599	378,568
NJ	1,797,524	815,343	1,743,704	790,931
DE	1,912	867	(41,708)	(18,918)
MD	219,153	99,406	193,970	87,983
VA	2,291,026	1,039,192	2,377,721	1,078,516
NC	2,949,751	1,337,985	2,651,470	1,202,687
Total <sup>2</sup>	10,747,535	4,875,000	10,416,903	4,725,028

Note: Parentheses indicate a negative number.

<sup>1</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

<sup>2</sup> Total adjusted quota accounts for DE as zero.

2. In the document published at 66 FR On pages 12904, 12905, and 12906,  
12902, March 1, 2001, the following Tables 2, 3, 5, and 6 are revised in their  
corrections are made: entirety as follows:

TABLE 2. SCUP PRELIMINARY 2000 LANDINGS BY PERIOD

Period	2000 Quota <sup>1</sup>		2000 Landings		2000 Overage	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter I	1,037,253	470,490	1,384,252	627,886	346,999	157,396
Summer	637,878	289,337	1,240,218	562,553	602,340	273,217
Winter II	70,356	31,913	34,582	15,686	0	0
Total	1,745,487	791,740	2,659,052	1,206,126	949,339	430,613

<sup>1</sup> Reflects quotas as published on August 18, 2000 (65 FR 50463).

<sup>2</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

TABLE 3. SCUP FINAL 2001 ADJUSTED QUOTAS

Period	2000 Initial Quota		2000 Adjusted quota <sup>1</sup>	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter I	2,004,959	909,434	1,675,960	752,038
Summer	1,731,172	785,246	1,128,832	512,030
Winter II	708,469	321,356	708,469	321,356
Total	4,444,600	2,016,037	3,495,261	1,585,424

<sup>1</sup> Possession limits specified in Table 1.

<sup>2</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

\* \* \* \* \*

TABLE 5. BLACK SEA BASS PRELIMINARY 2000 LANDINGS BY QUARTER

Period	2000 Quota		2000 Landings		2000 Overage	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
1	1,168,760	530,141	847,463	384,403	0	0
2	734,088	332,982	973,186	441,430	239,098	108,453
3	238,795	108,317	299,844	136,007	61,049	27,691
4	490,038	222,281	512,798	232,601	22,760	10,324
Total	2,631,681	1,193,721	2,633,291	1,194,441	322,907	146,468

<sup>1</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

TABLE 6. BLACK SEA BASS FINAL 2001 ADJUSTED QUOTAS

Period	2001 Initial quota		2001 Adjusted quota <sup>1</sup>	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
1	1,168,760	530,141	1,168,760	530,141

TABLE 6. BLACK SEA BASS FINAL 2001 ADJUSTED QUOTAS—Continued

Period	2001 Initial quota		2001 Adjusted quota <sup>1</sup>	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
2	885,040	401,447	645,942	292,994
3	372,951	169,168	311,902	141,476
4	597,991	271,244	575,231	260,920
Total	3,024,742	1,372,000	2,701,835	1,225,532

<sup>1</sup> Trip limits specified in Table 4.<sup>2</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.**Classification**

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01-22920 Filed 9-7-01; 3:17 pm]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 010510121-1210-02; I.D. 012601B]

**RIN 0648-AN23**

**Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Definition of Length Overall of a Vessel**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to clarify the definition of length overall (LOA) of a vessel for the purposes of the regulations governing the groundfish fisheries in the exclusive economic zone (EEZ) off Alaska. The action is intended to clarify the existing definition of LOA and thus prevent any misunderstanding or equivocation by vessel owners in determining a vessel's LOA. Also, the action is intended to further the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

**DATES:** Effective October 12, 2001.

**ADDRESSES:** Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and supplemental Final Regulatory

Flexibility Analysis (FRFA) are available from the Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

**FOR FURTHER INFORMATION CONTACT:**

Patsy A. Bearden, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the EEZ off Alaska are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679.

This final rule clarifies the definition of vessel LOA by removing the definitions of stem and stern, revising the definition of LOA at 50 CFR 679.2 to include bulwarks explicitly, and adding a definition for bulwarks. Further information on this action may be found in the preamble to the proposed rule published at 66 FR 28883, May 25, 2001. The proposed rule invited public comment on this action through June 25, 2001. No comments were received on the proposed rule.

The final rule makes one change to the proposed rule. The proposed rule would have added to the regulations a definition of "bulwark" to read as follows: "Bulwark means a section of a vessel's side, continued above the main deck as a protection against heavy weather." This final rule revises that definition to delete the phrase "as a protection against heavy weather." That phrase is merely descriptive, not essential to defining a bulwark, and, as such, is inappropriate for the regulatory definition.

**Explanation of Rounding Conventions**

The following conventions will be used when rounding the LOA to the nearest foot:

(1) When the amount exceeding a whole foot measurement is less than 6 inches (15.2 cm), the LOA would be equal to that whole foot measurement.

For example, if the horizontal distance of a vessel is 124 ft, 5-3/4 inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m).

(2) When the amount exceeding a whole foot measurement is greater than 6 inches (15.2 cm), the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6-1/8 inches (38.0 m), the LOA of the vessel would be 125 ft (38.1 m).

(3) When the amount exceeding a whole foot measurement is exactly 6 inches (15.2 cm), the LOA would be equal to that whole foot measurement if the number is even; however, if the number is odd, the LOA would be equal to the next whole foot measurement. For example, if the horizontal distance of a vessel is 124 ft, 6 inches (37.9 m), the LOA of the vessel would be 124 ft (37.8 m), but, if the horizontal distance of the vessel is 59 ft, 6 inches (18.1 m), the LOA of the vessel would be 60 ft (18.3 m).

**Classification**

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a supplemental FRFA that analyzes the potential impact of this action on small entities for purposes of the Regulatory Flexibility Act (RFA). NMFS considered the status quo or "no action" alternative of retaining the present definition of LOA without change. However, this was rejected in order to define LOA unambiguously and provide clear and certain regulatory guidance for measuring LOA of fishing vessels operating in the EEZ off Alaska. While this action is intended simply to clarify the existing definition of LOA and thus prevent any misunderstanding or equivocation by vessel owners in determining a vessel's LOA, some vessels currently operating in the EEZ off Alaska under Federal Fisheries Permits may find their registered LOAs to be inconsistent with the regulatory definition of LOA. At present, approximately 1,613 vessels are registered to operate in the EEZ off

Alaska under Federal Fisheries Permits. NMFS has taken steps to mitigate the impact of this action on small entities by not requiring vessel owners to determine whether their registered LOAs are consistent with the revised definition. Nevertheless, some of the 1,613 vessels currently operating in the EEZ off Alaska under Federal Fisheries Permits may find their registered LOAs to be inconsistent with the regulatory definition of LOA. Vessels failing to have correct LOA measurements may incur costs associated with remeasuring their LOA. Unfortunately, at this time, NMFS has insufficient data to assess the actual number of such vessels affected in this manner, but it believes most LOAs are accurate.

However, vessels that are near observer coverage thresholds (125 ft (38.1 m) or 60 ft (18.3 m), as applicable) may incur considerable cost if it is determined that their LOA is incorrect and if a higher level of observer coverage would be required.

Approximately 38 vessels with recorded LOA measurements of 122 ft (37.2 m), 123 ft (37.5 m), and 124 ft (37.8 m), may be subject to more stringent observer requirements if their LOAs are actually 125 ft (38.1 m), or greater. Approximately 156 vessels with LOA measurements of 57 ft (17.4 m), 58 ft (17.7 m), and 59 ft (18.0 m) may be subject to more stringent observer requirements if their LOAs are actually 60 ft (18.3 m) or greater. Such vessels could incur costs of \$300/day for an observer.

The FRFA provides some evidence that bulwarks are typically included in measurements of LOA by marine surveyors.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: September 5, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, the definition for “Bulwark” is added in alphabetical

order, the definition for “Length overall of a vessel” is revised; and the definitions for “Stem” and “Stern” are removed as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Bulwark* means a section of a vessel's side continuing above the main deck.

\* \* \* \* \*

*Length overall (LOA) of a vessel* means the centerline longitudinal distance, rounded to the nearest foot, measured between:

(1) The outside foremost part of the vessel visible above the waterline, including bulwarks, but excluding bowsprits and similar fittings or attachments, and

(2) The outside aftermost part of the vessel visible above the waterline, including bulwarks, but excluding rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 to this part).

\* \* \* \* \*

[FR Doc. 01-22807 Filed 9-11-01; 8:45 am]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 090701A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pollock In Statistical Area 610 of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 7, 2001, until 1200 hrs, A.l.t., October 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, under harvest or over harvest of a seasonal allowance of pollock may be added to or subtracted from the subsequent seasonal allowances of pollock in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(A)(5)(ii)(C)). The combined A, B, and C season allowance of the pollock TAC in Statistical Area 610 is 22,559 metric tons (mt) as established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001). The Regional Administrator has determined that the A and B seasonal catch was in excess of the allowances by 170 mt and that the excess shall be proportionately subtracted from the subsequent seasonal allowances. The Regional Administrator hereby reduces the C season pollock TAC by 93 mt. In accordance with § 679.20(a)(5)(ii)(C), the C season allowance of pollock TAC in Statistical Area 610 is 10,905 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the C season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,705 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would

be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2001.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01-22904 Filed 9-7-01; 8:45 am]

**BILLING CODE 3510-22-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 090701B]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Trawling in Steller Sea Lion Protection Areas in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting trawling within Steller sea lion protection areas in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season critical habitat limit of the 2001 total allowable catch (TAC) of Atka mackerel allocated to the Central Aleutian District.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 9, 2001, through 2400 hrs. A.l.t., December 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2001 B season apportionment of TAC for Atka mackerel in the Central Aleutian District is 15,540 metric tons (mt), of which no more than 7,148 mt may be harvested from Steller Sea lion protection areas (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001). See §§ 679.20 (a)(8)(ii)(A) and 679.22 (a)(12)(iii)(B).

In accordance with § 679.22 (a)(12)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowable harvest of Atka mackerel in the Steller Sea lion protection areas in the Central Aleutian District has been reached.

Consequently, NMFS is prohibiting trawling in selected rookery and haul out sites, as defined at Table 21 of 50 CFR 679.22 and described at 50 CFR 679.22 (a)(12)(iii)(A) in the Central Aleutian District of the BSAI.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2001 Atka mackerel critical habitat limit in the Central Aleutian District of the BSAI constitutes good cause to waive the requirement to provide prior notice opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553 (b)(3)(B) and 50 CFR 679.20 (b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the 2001 Atka mackerel critical habitat limit in the Central Aleutian District of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553 (d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2001.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01-22903 Filed 9-7-01; 3:17 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 66, No. 177

Wednesday, September 12, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 249-0290b; FRL-7046-1]

#### Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from adhesives and sealants and from other solvent containing materials. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by October 12, 2001.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board,  
Stationary Source Division, Rule  
Evaluation Section, 1001 "I" Street,  
Sacramento, CA 95814.

Bay Area Air Quality Management  
District, 939 Ellis Street, San  
Francisco, CA 94109.

South Coast Air Quality Management  
District, 21865 E. Copley Drive,  
Diamond Bar, CA 91765.

**FOR FURTHER INFORMATION CONTACT:** Yvonne Fong, Rulemaking Office (AIR-4), U.S. Environmental Protection Agency, Region IX, (415) 744-1199.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: BAAQMD 8-51 and SCAQMD 443.1. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 3, 2001.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 01-22737 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Region 2; Docket No. NJ46-226, FRL-7055-6]

#### Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans and Transportation Conformity Budgets for 2002, 2005 and 2007

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a New Jersey State Implementation Plan (SIP) revision involving the State's 1-hour Ozone Plan which is intended to meet several Clean Air Act requirements including the separate requirement for enforceable commitments for the 1-hour ozone attainment demonstration. Specifically, EPA is proposing approval of the: 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories;

Reasonable Further Progress Plans for milestone years 2002, 2005 and 2007; transportation conformity budgets for 2002, 2005 and 2007; and contingency measures. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone.

**DATES:** Comments must be received on or before October 12, 2001.

**ADDRESSES:** All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

Copies of the New Jersey submittals and EPA's Technical Support Document are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,  
Region 2 Office, Air Programs Branch,  
290 Broadway, 25th Floor, New York,  
New York 10007-1866

New Jersey Department of  
Environmental Protection, Office of  
Air Quality Management, Bureau of  
Air Pollution Control, 401 East State  
Street, CN027, Trenton, New Jersey  
08625.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Truchan concerning general questions or RFP Plans and Demian Ellis concerning emission inventories, both of the Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.

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## I. Overview

### A. What Action Is EPA Taking Today?

On April 11, 2001, New Jersey submitted a revision to its 1-hour ozone SIP which addressed several Clean Air Act (Act) requirements. After reviewing this submittal compared to EPA policy and guidance, EPA is proposing approval of this submittal which includes: the 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories; Reasonable Further Progress (RFP) Plans for milestone years 2002, 2005 and 2007; transportation conformity budgets for 2002, 2005 and 2007; and contingency measures. This submittal applies to the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For purposes of this action these areas will be referred to as, respectively, the Northern New Jersey ozone nonattainment area (NAA) and the Trenton ozone NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset,

Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

This SIP revision is intended to fulfill the Act's three percent per-annum reasonable further progress (RFP) plan requirement. It also includes: ozone projection year emission inventories, contingency measures and transportation conformity budgets and fulfills the periodic emission inventory requirement for 1996.

### B. What Is Required by the Clean Air Act and How Does it Apply to New Jersey?

Section 182 of the Act specifies the required State Implementation Plan (SIP) submissions and requirements for areas designated nonattainment for the 1-hour ozone standard and when the states must make these submissions to EPA. EPA has issued the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) describing in detail EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal.

New Jersey has four ozone nonattainment areas (NAAs). These areas are the Allentown-Bethlehem Easton Area (Warren County), Atlantic City Area, the Trenton Area, and the Northern New Jersey Area. For the Atlantic City and Allentown-Bethlehem Easton areas, the most recent three years of data continue to demonstrate attainment of the 1-hour ozone standard and, therefore, RFP Plans are not necessary. As for the Northern New Jersey and Trenton NAAs, which are classified as severe ozone nonattainment areas, the most recent

three years of data, while showing improved air quality, continues to show nonattainment. The primary focus of this **Federal Register** action is the Northern New Jersey and Trenton NAAs. Additional details of EPA's review are included in the Technical Support Document.

## II. Emission Inventories

### A. What Is Contained in New Jersey's 1996 Periodic Emission Inventory?

New Jersey developed a 1996 actual inventory consisting of point, area, on-road mobile, nonroad mobile, and biogenic source emissions. The point source inventory was based on data from New Jersey's annual Emission Statement Program which requires sources (which have the potential to emit greater than 10 tons per year of volatile organic compounds (VOCs) or 25 tons of oxides of nitrogen (NO<sub>x</sub>)) to report actual emissions. The area source inventory was based on the latest factors and methodologies recommended by EPA. The on-road mobile source inventory was developed using data on vehicle miles traveled provided by the Metropolitan Planning Organizations in conjunction with emission factors generated using EPA's MOBILE5 emissions model for the eight on-road vehicle classes. Vehicle registration data for 1996 was used in the modeling. The nonroad mobile source inventory was developed using EPA's draft NONROAD model to generate emissions for the nonroad engines and equipment category; landing and takeoff data to generate aircraft emissions; estimated fuel consumption data for locomotive emissions; and estimated fuel consumption and vessel trips for commercial marine vessel emissions. The biogenic source inventory was developed using the USEPA's Biogenic Emission Inventory System (BEIS) Version 2.3. Table 1 below provides a summary of 1996 VOC and NO<sub>x</sub> emissions in tons per summer day (tpd) statewide and by nonattainment area.

TABLE 1.—SUMMARY OF 1996 VOC AND NO<sub>x</sub> EMISSIONS IN NEW JERSEY BY STATE AND NONATTAINMENT AREA  
[tons per day]

Category	Point	Area	On-Road	Nonroad	Biogenic	Total
<b>VOC Emissions</b>						
Atlantic City .....	0.43	13.02	13.38	20.29	114.07	161.19
Northern N.J. ....	140.87	215.27	206.52	138.41	310.70	1011.77
Trenton .....	28.73	72.35	82.70	41.99	241.91	467.68
Allentown .....	3.19	4.34	6.41	3.04	20.84	37.82
State Total .....	173.22	304.98	309.01	203.73	687.52	1678.46

TABLE 1.—SUMMARY OF 1996 VOC AND NO<sub>x</sub> EMISSIONS IN NEW JERSEY BY STATE AND NONATTAINMENT AREA—  
Continued  
[tons per day]

Category	Point	Area	On-Road	Nonroad	Biogenic	Total
<b>NO<sub>x</sub> Emissions</b>						
Atlantic City .....	39.91	1.81	23.80	11.46	0.85	77.83
Northern N.J. ....	154.20	29.57	302.92	202.07	3.87	692.63
Trenton .....	94.47	7.86	112.94	52.18	3.09	270.54
Allentown .....	2.47	0.42	14.17	3.53	0.99	21.58
State Total .....	291.05	39.66	453.83	269.24	8.80	1062.58

EPA proposes to find New Jersey's 1996 periodic emission inventory to be consistent with EPA's policy and guidance and is approvable.

*B. How Were New Jersey's 2002, 2005, and 2007 Projection Year Inventories Developed and What Were the Results?*

In order to project its VOC and NO<sub>x</sub> emissions out to future years, New Jersey based its projections on the 1996 periodic emission inventory. The point source projections were developed by applying growth factors generated either from the Economic Growth Analysis System (EGAS) or the Department of Energy's Energy Information Administration (EIA). The area source projections were developed by applying growth factors which were based on a variety of indicators including but not limited to: population, vehicle miles

traveled, fuel combustion, pesticide use, traffic paint use, asphalt applied, value added, etc. The on-road mobile source projections were developed for the eight vehicle classes by multiplying emission factors generated from MOBILE5 by VMT projections supplied by the Metropolitan Planning Organizations within the State. The nonroad mobile source projections were derived in several ways: for the nonroad equipment and engine category, EPA's draft NONROAD model was used to generate the projections. For commercial marine vessels, the State determined growth factors from the rulemaking document entitled, "Control of Emissions of Air Pollution from New Compression-Ignition Marine Engines at or above 37 Kilowatts," and applied the factors by pollutant and vessel category. For locomotive emission projections,

the State based its projections upon the regulatory support document for the rulemaking entitled, "Emission Standards for Locomotives and Locomotive Engines." The State determined the emission factors and applied them by the percent of the locomotive engines covered by the EPA rulemaking. Locomotive engines not covered by the rulemaking were projected by population. For aircraft emission projections, the State based these on either the number of landing and take-off operations, EGAS model calculations, or flight facility specific information, depending upon the aircraft and the availability of the data. Table 2 below provides a summary of projected VOC and NO<sub>x</sub> emissions for the Northern New Jersey and Trenton NAAs.

TABLE 2.—SUMMARY OF 2002, 2005, AND 2007 PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN NEW JERSEY BY NONATTAINMENT AREA <sup>1</sup> (TPD)

Category	Point	Area	On-Road	Nonroad	Total
<b>2002</b>					
<b>Northern New Jersey</b>					
VOC .....	149.01	225.15	135.48	106.70	616.34
NO <sub>x</sub> .....	94.01	29.58	229.28	220.65	573.52
<b>Trenton</b>					
VOC .....	30.42	76.34	61.63	33.31	201.70
NO <sub>x</sub> .....	84.69	7.85	86.14	55.30	233.98
<b>2005</b>					
<b>Northern New Jersey</b>					
VOC .....	156.27	234.03	94.58	93.23	578.11
NO <sub>x</sub> .....	85.27	29.77	178.75	217.72	511.51
<b>Trenton</b>					
VOC .....	31.83	79.42	42.64	29.62	183.51
NO <sub>x</sub> .....	71.34	7.89	66.04	54.12	199.39
<b>2007</b>					
<b>Northern New Jersey</b>					
VOC .....	162.13	238.40	89.83	83.51	573.87

TABLE 2.—SUMMARY OF 2002, 2005, AND 2007 PROJECTED VOC AND NO<sub>x</sub> EMISSIONS IN NEW JERSEY BY NONATTAINMENT AREA <sup>1</sup> (TPD)—Continued

Category	Point	Area	On-Road	Nonroad	Total
NO <sub>x</sub> .....	93.64	30.14	165.12	212.72	501.62
<b>Trenton</b>					
VOC .....	<sup>2</sup> n/a	n/a	n/a	n/a	n/a
NO <sub>x</sub> .....	n/a	n/a	n/a	n/a	n/a

<sup>1</sup> Emissions include growth and application of controls.<sup>2</sup> Not applicable.

EPA proposes to find New Jersey's 2002, 2005, and 2007 projection year emission inventories to be consistent with EPA's policy and guidance and finds them approvable.

### III. Reasonable Further Progress Plans

#### A. What Is a Reasonable Further Progress (RFP) Plan?

A RFP Plan is a plan developed by a state for reducing VOC emissions by three percent per year averaged over each consecutive three-year period beginning six years after enactment of the Act (1996) until the area attains the 1-hour ozone standard (2005 for the Trenton NAA and 2007 for the Northern New Jersey NAA). EPA previously approved the 15 and 9 Percent ROP Plans for New Jersey (64 FR 19913,

April 23, 1999). Those plans identified the control measures and the VOC and NO<sub>x</sub> emission reduction credits associated with those measures that would be achieved from 1990 through 1999. This proposal takes action on the RFP Plans for the Trenton NAA for milestone years 2002 through the attainment year 2005; and the Northern New Jersey NAA for milestone year 2002, 2005, through the attainment year 2007.

#### B. How Does New Jersey Demonstrate RFP?

Using 1990 base year emission inventory which EPA approved on April 23, 1999 (64 FR 19913), New Jersey calculated an "adjusted baseline inventory" by removing the biogenic and non-creditable reductions (Federal

Motor Vehicle Control Program and Federal Gasoline Reid Vapor Pressure regulations) from the base year emissions. The required RFP percent reduction was then applied to the adjusted baseline year inventory to yield the VOC emission target levels. New Jersey used a cumulative percent reduction methodology for the RFP demonstration. Instead of showing a 9% reduction between 2000–2002, a 9% reduction between 2003–2005 and a 6% between 2006–2007, the State showed it would achieve 33% by 2002 (15% from the 15 Percent ROP Plan plus 9% from the Post 1996 ROP Plan plus 9% from the Post 1999 RFP Plan equaling a total of 33%), similarly, a 42% reduction by 2005 and 48% reduction by 2007. These are summarized in Table 3.

TABLE 3.—VOC REASONABLE FURTHER PROGRESS TARGET LEVELS

Nonattainment Area New Jersey Portion	Base Year (tpd)	VOC Emission Target levels (tpd)		
	1990	2002	2005	2007
Northern New Jersey .....	957.03	593.91	512.90	459.89
Trenton .....	358.15	229.35	196.27	

The VOC target emission level is the level the State must be at or below in order to achieve RFP. The State selected the control measures which will reduce the projected VOC emissions to this target level or below. The projected VOC and NO<sub>x</sub> emissions include growth that occurs from the 1990 base year. These measures must result in attainment as soon as practicable, but no later than the attainment date based on the nonattainment areas' classification.

Using the projection year emission inventories (discussed above) along with the selected control measures, the State then checked its control strategy selection by determining what the emissions would be in the milestone years and compares it to the target VOC emission levels.

#### C. Can Control Measures That Reduce NO<sub>x</sub> Be Used To Demonstrate RFP?

New Jersey has shown using photochemical grid modeling that NO<sub>x</sub> reductions will contribute toward attaining the ozone standard. Section 182(c)(2)(C) of the Act allows NO<sub>x</sub> reductions to be substituted for VOC reductions in RFP demonstrations in accordance with EPA guidance. New Jersey has shown that NO<sub>x</sub> reductions may appropriately be counted towards the RFP requirements. A full explanation of how New Jersey satisfied EPA's guidance is included in the TSD.

Based on EPA guidance, New Jersey has demonstrated that every ton of NO<sub>x</sub> is equivalent to approximately 0.91 tons of VOC in the Northern New Jersey NAA on a percent of total inventory basis. In the Trenton NAA New Jersey

only used VOC reductions to demonstrate RFP.

#### D. What Are the Results of New Jersey's RFP Plan Demonstration?

New Jersey demonstrated RFP based on a cumulative methodology. It incorporated growth in point, area and mobile source categories, and benefits from State and federal control measures. New Jersey also adjusted the NO<sub>x</sub> reductions to account for growth that is projected to occur by the target years. NO<sub>x</sub> emission reductions were used along with VOC emission reductions in the Northern New Jersey NAA to demonstrate RFP.

Figure 1 plots the VOC target out to 2007 for the Northern New Jersey NAA. The projected VOC emissions including growth and applying control measures is also plotted and a third line

represents the sum of the VOC emissions and VOC equivalent reductions resulting from NO<sub>x</sub> reductions (NO<sub>x</sub> equivalent). As can be seen from Figure 1, the sum of the VOC emissions with NO<sub>x</sub> equivalent reductions falls below the VOC target level. This demonstrates that RFP will be achieved. The projected controlled

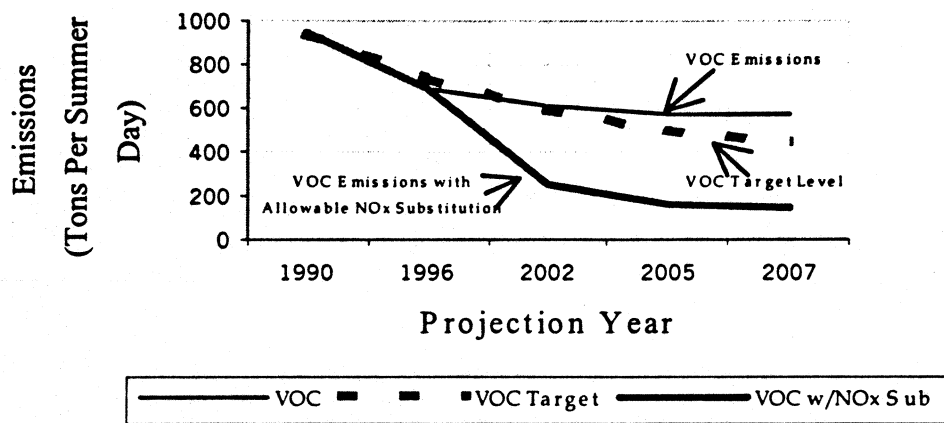
level of emissions in milestone years 2002, 2005 and 2007 are 250.41, 158.84, and 145.84 tons per summer day, respectively.

Figure 2 shows the results of applying the RFP Plans for the Trenton NAA. It demonstrates that RFP is achieved with only VOC control measures. The projected controlled level of emissions

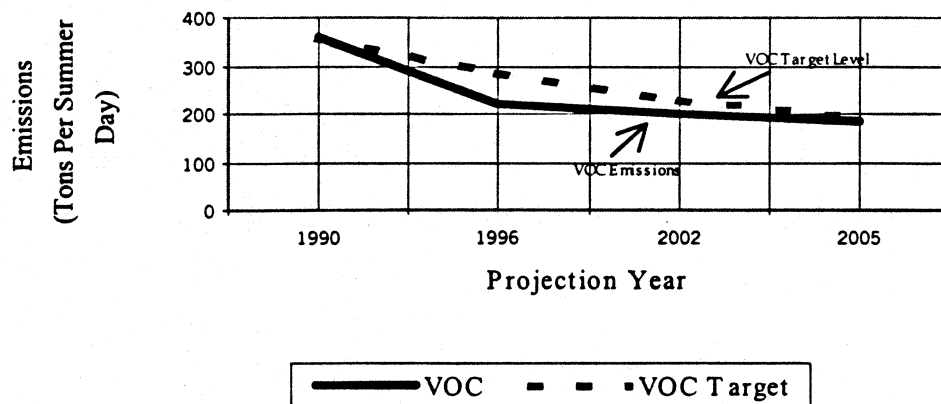
in milestone years 2002 and 2005 are 201.71 and 183.53 tons per summer day, respectively. New Jersey adopted the NO<sub>x</sub> control measures with statewide applicability and the NO<sub>x</sub> controls are needed to demonstrate attainment of the 1-hr ozone NAAQS, but not to meet RFP requirements in the Trenton NAA.

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**Figure 1: Projection Year Emissions  
To Required Attainment Date  
(For Northern N.J. NAA)**



**Figure 2: Projection Year Emissions  
To Required Attainment Date  
(for Trenton NAA)**



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*E. How Will New Jersey Achieve the Necessary Emission Reductions?*

New Jersey provided a plan which contains control measures sufficient to achieve the RFP reductions required for

the Northern New Jersey and Trenton NAAs. Table 4 identifies the specific control measures New Jersey will rely on between 2000-2007. Some of those control measures were utilized in the federally approved 15 and 9 Percent ROP plans, however, due to the nature

of the control measures/programs these measures achieve additional emission reduction credits beyond those used in the 15 and 9 Percent ROP Plans. These unused reductions are being applied to these RFP Plans. For a concise description of those control measures

and emission reduction credits used in the 15 and 9 Percent Plans, the reader is referred to EPA's proposed rulemaking actions on the New Jersey 15 and 9 Percent ROP plans, published in the **Federal Register** on April 30, 1997 (62 FR 23410) and March 1, 1999 (64 FR 9952). All of the measures identified in Table 4 have either been adopted by New Jersey and approved by EPA as SIP revisions or are promulgated federal measures.

Table 5 contains a list of the new measures that were not previously included in New Jersey's 15 and 9 Percent Plans. A brief description of these new measures follows the table.

TABLE 4.—CONTROL MEASURES INCLUDED IN NEW JERSEY RFP PLANS

Stationary Sources:
Pre-1996 Controls Applied to New Sources
NO <sub>x</sub> Budget Program
Area Sources:
Marine Vessel Ballasting and Loading of Gasoline (Barge & Tanker)
Architectural Surface Coatings
Consumer and Commercial Solvents
Auto Refinishing
Landfills
On-road:
New Vehicle Standards—Tier 1
New Vehicle Standards—Tier 2
National Low Emission Vehicle Program—NLEV
Reformulated Gasoline—Phase II
Enhanced Inspection and Maintenance (I/M)
Heavy Duty Diesel Vehicle Defeat Device & New Engine Standards
Nonroad:
Spark Ignition, Small Engines
New Marine Gas Engines
Nonroad Diesel Engines
Locomotive Engines
Commercial Marine Diesel Engines

TABLE 5.—NEW CONTROL MEASURES NOT INCLUDED IN NEW JERSEY'S 15 AND 9 PERCENT ROP PLANS

NO <sub>x</sub> Budget Program
Reformulated Gasoline Phase II—On-Road
Enhanced Inspection and Maintenance (I/M) Program
Heavy Duty Diesel Vehicle Defeat Device & New engine standards
New Vehicle Standards—Tier 2
Nonroad measures:
Spark Ignition, Small Engines
New Marine Gas Engines
Nonroad Compression Engines
Locomotive Engines
Commercial Marine Diesel Engines

### 1. NO<sub>x</sub> Budget Program

New Jersey's NO<sub>x</sub> reduction programs began with adopting regulations requiring NO<sub>x</sub> reasonably available

control technology (RACT) for stationary sources emitting NO<sub>x</sub>. This was approved by EPA on March 29, 1999 (64 FR 14834). It was further expanded to incorporate the Ozone Transport Commission (OTC) Memorandum of Understanding recommendations which were effective starting in 1999 and additional requirements in 2003 for major NO<sub>x</sub> sources. These were approved by EPA on September 5, 2000 (65 FR 53599).

On October 27, 1998, EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO<sub>x</sub> SIP Call." See 63 FR 57356. At that time, the NO<sub>x</sub> SIP Call required 22 states and the District of Columbia<sup>1</sup> to meet statewide NO<sub>x</sub> emission budgets during the five month period from May 1 through September 30 in order to reduce the amount of ground level ozone that is transported across the eastern United States. The NO<sub>x</sub> SIP Call set out a schedule that required the affected states, including New Jersey, to adopt regulations by September 30, 1999, and to implement control strategies by May 1, 2003.<sup>2</sup>

The NO<sub>x</sub> SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. However, the SIP Call notice suggested that imposing statewide NO<sub>x</sub> emission caps on large fossil-fuel fired industrial boilers and electricity generators would provide a highly cost-effective means for states to meet their NO<sub>x</sub> budgets. On December 10, 1999 and July 31, 2000, New Jersey submitted SIP revisions which included revisions to Subchapter 31, "NO<sub>x</sub> Budget Program," (adopted July 28, 2000) and a narrative explaining the Regional NO<sub>x</sub> Cap Program requirements in New Jersey. These

<sup>1</sup> Alabama, Connecticut, District of Columbia, Delaware, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Wisconsin, and West Virginia.

<sup>2</sup> On May 25, 1999, the D.C. circuit issued a stay of the submission requirement of the SIP Call pending further order of the court. *Michigan v. EPA*, No. 98-1497 (D.C. Cir. May 25, 1999) (order granting stay in part). On December 10, 1999 and July 31, 2000, New Jersey voluntarily submitted this revision to EPA for approval notwithstanding the court's stay of the SIP submission deadline. On March 3, 2000, the D.C. Circuit ruled on *Michigan v. EPA*, affirming most aspects of the SIP Call and remanding limited portions to the Agency. On June 22, 2000, the DC circuit lifted the stay of the SIP submission obligations and provided states until October 30, 2000 to adopt regulations.

submittals were made to strengthen its 1-hour ozone SIP and to comply with EPA's NO<sub>x</sub> SIP Call during each ozone season, i.e., May 1 through September 30, beginning in 2003. On May 22, 2001 (66 FR 28063) EPA approved New Jersey's NO<sub>x</sub> control program and found it complied with the NO<sub>x</sub> SIP Call.

### 2. Reformulated Gasoline Phase II—On-Road

The second phase of the federal reformulated gasoline program (RFG Phase II) began on January 1, 2000 and applied statewide. RFG Phase II reduces emissions further than the first phase of the program, requiring minimum ozone season VOC reductions of 27 percent from VOC levels based on average 1990 gasoline formulations. The second phase of the program also requires that refiners reduce NO<sub>x</sub> levels by a minimum of seven percent from average 1990 levels. New Jersey has accounted for the emissions reduction effects of RFG Phase II in its most recent RFP Plans.

### 3. Enhanced I/M Program

The implementation phase of New Jersey's Enhanced I/M program was delayed and the emission reductions were unavailable for use in the 15 and 9 Percent Rate of Progress Plans. It is currently operational and EPA reinstated the interim approval on June 12, 2001 (66 FR 31544). New Jersey has submitted its proposed final National Highway Systems Designations Act evaluation report and its revised performance standard modeling for parallel processing as a SIP revision. EPA will be proposing action on this submittal in a separate **Federal Register**.

### 4. Heavy-Duty Diesel Vehicle (HDDV) Defeat Devices Settlement

On October 22, 1998, the Department of Justice and the EPA announced a settlement with seven major diesel engine manufacturers to resolve claims that they illegally installed software that resulted in increased emissions. New Jersey has accounted for the decrease in emission reductions from this program by identifying additional credits from other programs. While the settlement will result in lower emissions, these lower emissions will not occur in the time frame the RFP Plans cover.

### 5. New Vehicle Standards—Tier 2

On February 10, 2000, EPA promulgated more stringent motor vehicle emission standards and low sulfur gasoline limits as part of the Federal Motor Vehicle Control Program (FMVCP). These are referred to as the Tier 2/Low Sulfur Gasoline Program and

go into effect beginning in 2004. The benefit from these regulations increase as new vehicles replace old ones. New Jersey has accounted for the emissions reduction effects of Tier 2/Low Sulfur Gasoline Program in its most recent RFP Plans.

#### 6. Nonroad Measures

New Jersey has included emission reductions from several promulgated federal regulations: spark ignition small engine, Phase I and II; new gasoline spark ignition marine engines; nonroad compression ignition engines (Tiers 1, 2 and 3); locomotives and locomotive engines; and commercial marine diesel engines. The benefit from these regulations increase as new engines replace old ones. New Jersey used EPA's National Nonroad Emissions Model to calculate the emissions and benefits from the first three categories, for the last two categories the regulatory support documents were used from EPA's rulemakings to calculate the emission reduction benefit. The benefit from Reformulated Gasoline Phase II in nonroad gasoline engines is included in these emission calculations.

New Jersey based its emissions reductions from the first three categories using EPA's draft NONROAD computer model. New Jersey believed this method was more accurate than allocating national emissions and reductions for each engine type to each of New Jersey's nonattainment areas. EPA has determined that New Jersey's methods for predicting emissions benefits from this source category are acceptable. However, New Jersey should be aware that it may need to recalculate the nonroad emission inventory once the model has been officially released for use. Recalculation would be necessary if, at that time, there is reason to believe that results predicted by the final NONROAD model would affect the outcome of the RFP Plans conclusions. This is because EPA guidance does not recommend use of draft models for SIP purposes.

#### F. Summary of 2002, 2005 and 2007 RFP Plans Evaluation

New Jersey has identified the control measures necessary for achieving the required emission reductions and all the measures have been adopted and implemented or adopted and scheduled for implementation. EPA is proposing to find that the RFP Plans contain sufficient control measures as identified in Table 4 to achieve the required emission reductions. EPA proposes to approve these emission reduction credits as part of the RFP Plans.

#### G. How Do the RFP Plans Relate to the 1-Hour Ozone Attainment Demonstration?

New Jersey's attainment demonstration was based on photochemical grid modeling and demonstrated that NO<sub>x</sub> reductions are beneficial in reducing ozone concentrations. The RFP Plans demonstration contained the same control measures included in the 1-hour ozone attainment demonstrations, dated August 31, 1998. The projected controlled emission levels will decrease further when the State adopts the measures needed to meet the additional emissions reduction which EPA identified in its December 16, 1999 proposed approval of the 1-hour ozone attainment demonstrations. In addition, because New Jersey historically applies control measures statewide, additional emission reductions from three counties not included in the two severe nonattainment areas will lower ozone precursor emissions transported into the severe nonattainment areas.

#### H. How Did New Jersey Address the Contingency Measure Requirement?

The New Jersey submittal also addresses contingency measures required under the Act. Section 172(c)(9) of the Act requires states with ozone nonattainment areas classified as moderate and above to adopt contingency measures by November 15, 1993. Such measures must provide for the implementation of specific emission control measures if an ozone nonattainment area fails to achieve RFP or fails to attain the NAAQS within the time-frames specified under the Act. Section 182(c)(9) of the Act requires that, in addition to the contingency measures required under section 172(c)(9), the contingency measure SIP revision for serious and above ozone nonattainment areas must also provide for the implementation of specific measures if the area fails to meet any applicable milestone in the Act. As provided by these sections of the Act, the contingency measures must take effect without further action by the state or by the EPA Administrator upon failure by the state to: meet RFP emission reduction milestones; attain the NAAQS by the required deadline; or meet other applicable milestones of the Act. EPA's policy, as provided in the April 16, 1992, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498), states that the contingency measures, in total, must generally be able to provide for 3% reduction of the 1990 adjusted baseline

emissions beyond the reduction required for a particular milestone year. While all contingency measures must be fully adopted rules or measures, states can use the measures in two different ways. A state can choose to implement contingency measures before the milestone deadline.

Alternatively, a state may decide not to implement a contingency measure until an area has actually failed to achieve a RFP or attainment milestone. In the latter situation, the contingency measure emission reduction must be achieved within one year following identification of a milestone failure. The General Preamble indicates that the 3% reduction "buffer" must be maintained through each RFP milestone. Therefore, New Jersey must demonstrate that the two severe nonattainment areas have enough contingency measure reductions in addition to the reductions claimed for the 2002, 2005 and 2007 RFP Plans.

Consistent with EPA guidance, New Jersey used a combination of excess VOC and NO<sub>x</sub> emission reductions (0.3% VOC and 2.7% NO<sub>x</sub>) resulting from the implementation of New Jersey's Subchapter 24, "Control and Prohibition of Volatile Organic Compounds from Consumer and Commercial Products" and Subchapter 31, "Ozone Transport Commission NO<sub>x</sub> Budget Program" to provide for the contingency reductions.

The New Jersey RFP Plans achieve, in addition to the RFP ozone precursor reduction, a 3% reduction in VOC and NO<sub>x</sub> through creditable control measures. For this reason, the contingency measure portion of the 2002, 2005 and 2007 RFP Plans satisfy the contingency measure requirements of the Act. EPA proposes to approve the contingency measure portion of the SIP revision.

#### IV. Are Conformity Budgets Contained in These Plans and Are They Approvable?

The tables below summarize New Jersey's Emission Budgets contained in the April 11, 2001 SIP revision. They are based on 1999 vehicle registration data. On June 1, 2001 (66 FR 29797), EPA found these budgets to be adequate for conformity purposes effective June 18, 2001.

For the South Jersey Transportation Planning Organization (SJTPO) and Delaware Valley Regional Planning Commission (DVRPC) the 2002 budgets are new budgets based on the RFP Plans, while the 2005 budgets are revised attainment year budgets. For the North Jersey Transportation Planning Authority (NJTPA) the 2002 budgets are new budgets based on the RFP Plans,

the 2005 budgets are revised budgets also based on the RFP Plans, while the 2007 budgets are revised attainment year budgets.

By virtue of proposing approval of the 2002, 2005 and 2007 RFP Plans, EPA is

also proposing approval of the motor vehicle emissions budgets for VOC and NO<sub>x</sub>. In addition, since New Jersey's 2005 RFP Plan for the Trenton NAA and 2007 RFP Plan for the Northern New

Jersey NAA are consistent with the 1-hour attainment demonstrations, which EPA proposed to approve on December 19, 1999, these emission budgets also represent attainment year budgets.

TABLE 6.—NEW JERSEY TRANSPORTATION CONFORMITY BUDGETS

Transportation planning area	2002		2005		2007	
	VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)	VOC (tpd)	NO <sub>x</sub> (tpd)
North Jersey Transportation Planning Authority (NJTPA)	140.15	240.19	98.11	187.70	93.20	175.51
South Jersey Transportation Planning Organization (SJTPO)	17.49	33.02	13.36	26.42	<sup>1</sup> n/a	n/a
Delaware Valley Regional Planning Commission (DVRPC)	55.28	73.05	38.03	55.62	n/a	n/a

<sup>1</sup> Not applicable.

TABLE 7.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSION BUDGETS

	VOC tons/year	NO <sub>x</sub> tons/year
1990 Baseline	1,112	1,038
1996	1,186	1,107
1999	1,223	1,142
2002	1,405	875
2005	1,406	884

On April 11, 2000, New Jersey provided an enforceable commitment to revise its attainment year motor vehicle emission budgets within one year of the official issuance of the MOBILE6 motor vehicles emissions model for regulatory purposes. The revised budgets that will result from MOBILE6 will be based on a more appropriate estimation of the benefits from EPA's Tier 2 vehicle and fuel standards. New Jersey also provided an enforceable commitment to revise its attainment year motor vehicle emission budgets if additional mobile source control measures are adopted.

Since New Jersey has committed to revise the emissions budgets which EPA is proposing to approve today, EPA's approval of the emissions budgets will last only until adequate revised budgets are submitted pursuant to the above commitments. The revised budgets will apply as soon as they are found adequate. It is not necessary to wait until the revised budgets are approved as revisions to the respective Plans because EPA recognizes that if the revised budgets are revised according to MOBILE6, they will be based on a more technical understanding of motor vehicle emission control programs and therefore more appropriate than the originally approved budgets for conformity purposes. See EPA's July 28, 2000 supplemental proposal (65 FR 46383) for the ozone attainment

demonstrations for more background information.

Therefore, EPA finds that these budgets are consistent with the control measures included in the RFP Plans and attainment demonstrations. EPA is proposing to approve New Jersey's emission budgets. In the case of the attainment budgets, this approval will remain in effect only until the State submits and EPA finds adequate revised budgets meeting the commitments New Jersey has made with respect to submission of mobile source and shortfall measure budgets.

#### V. Are New Jersey's RFP Plans Consistent With EPA's Proposed Approval of New Jersey's 1-Hour Ozone Attainment Demonstration?

On December 16, 1999 (64 FR 70380), EPA proposed approval of New Jersey's 1-hour ozone attainment demonstrations SIP. However, EPA proposed that New Jersey's attainment demonstrations needed additional emission reductions in order to attain the 1-hour ozone standard with sufficient surety. EPA also identified the need for several other enforceable commitments. On April 26, 2000, New Jersey submitted to EPA the necessary enforceable commitments, including the one to adopt additional measures by October 31, 2001 which would achieve the additional emission reductions EPA identified. New Jersey has been an active participant in the

Ozone Transport Commission's process of developing regional control strategies that would achieve the necessary additional reductions to attain the 1-hour ozone standard. EPA proposes to approve the enforceable commitments that New Jersey submitted on April 26, 2000, and that New Jersey has met the conditions EPA identified in the December 16, 1999 **Federal Register**.

#### VI. What Are EPA's Conclusions?

EPA has evaluated these submittals for consistency with the Act, applicable EPA regulations, and EPA policy. EPA proposes approval of New Jersey's: 1996 periodic emission inventory; 2002, 2005 and 2007 ozone projection year emission inventories; 2002, 2005 and 2007 RFP Plans; transportation conformity budgets; contingency measures; and the enforceable commitments for the 1-hour ozone attainment demonstration.

#### VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves State law as meeting federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 31, 2001.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 01-22908 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 70

[KY-T5-2001-01; FRL-7055-3]

#### Clean Air Act Proposed Full Approval of Operating Permit Program; KY

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed full approval.

**SUMMARY:** EPA proposes to fully approve the operating permit program of the Kentucky Department of Environmental Protection. This program was submitted in response to the directive in the 1990 Clean Air Act (CAA) Amendments that permitting authorities develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources within the permitting authorities' jurisdiction. EPA granted interim approval to Kentucky's operating permit program on November 14, 1995. Kentucky revised its program to satisfy the conditions of the interim approval and this action proposes approval of those revisions and other program changes made since the interim approval was granted.

**DATES:** Comments on the program revisions discussed in this proposed action must be received in writing by EPA on or before October 12, 2001.

**ADDRESSES:** Written comments on the program revisions discussed in this action should be addressed to Ms. Kim Pierce, Regional Title V Program Manager, Air & Radiation Technology Branch, EPA, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Copies of the Kentucky submittals and other supporting documentation used in developing the proposed full approval

are available for inspection during normal business hours at EPA, Air & Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Interested persons wanting to examine these documents, which are contained in EPA docket file numbered KY-T5-2001-01, should make an appointment at least 48 hours before the visiting day.

**FOR FURTHER INFORMATION CONTACT:** Kim Pierce, EPA Region 4, at (404) 562-9124 or pierce.kim@epa.gov/.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

What is the operating permit program? What is being addressed in this document?

What are the program changes that EPA proposes to approve?

What is involved in this proposed action?

#### What Is the Operating Permit Program?

Title V of the CAA Amendments of 1990 required all state and local permitting authorities to develop operating permit programs that met certain federal criteria. In implementing the title V operating permit programs, the permitting authorities require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. The focus of the operating permit program is to improve enforcement by issuing each source a permit that consolidates all of the applicable CAA requirements into a federally enforceable document. By consolidating all of the applicable requirements for a facility, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under the title V program include: "Major" sources of air pollution and certain other sources specified in the CAA or in EPA's implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain operating permits. Examples of major sources include those that have the potential to emit 100 tons per year or more of volatile organic compounds (VOCs), carbon monoxide, lead, sulfur dioxide, nitrogen oxides (NO<sub>x</sub>), or particulate matter (PM<sub>10</sub>); those that emit 10 tons per year of any single hazardous air pollutant (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of hazardous air pollutants (HAPs). In areas that are not meeting the

National Ambient Air Quality Standards for ozone, carbon monoxide, or particulate matter, major sources are defined by the gravity of the nonattainment classification. For example, in ozone nonattainment areas classified as "serious," major sources include those with the potential of emitting 50 tons per year or more of VOCs or NO<sub>x</sub>.

#### **What Is Being Addressed in This Document?**

Where a title V operating permit program substantially, but not fully, met the criteria outlined in the implementing regulations codified at 40 Code of Federal Regulations (CFR) part 70, EPA granted interim approval contingent on the state revising its program to correct the deficiencies. Because the Kentucky program substantially, but not fully, met the requirements of part 70, EPA granted interim approval in a rulemaking (60 FR 57186) published on November 14, 1995. The interim approval notice described the conditions that had to be met in order for the Kentucky program to receive full approval. Kentucky submitted a revision to its interimly approved operating permit program on February 13, 2001. This document describes changes that have been made to the Kentucky operating permit program since interim approval was granted.

#### **What Are the Program Changes That EPA Proposes To Approve?**

As stipulated in the interim approval notice, full approval of the Kentucky title V operating permit program was made contingent upon the following rule changes:

(1) Revise the definitions of "emissions unit" and "stationary source" in 401 KAR 52:001 (previously 401 KAR 50:035, Section 1) to include the emissions of all HAPs listed in section 112(b) of the CAA for the purposes of determining title V applicability. Since both definitions reference the term "regulated air pollutant," Kentucky addressed the deficiencies by revising the definition of "regulated air pollutant" to include HAPs subject to a standard or other requirement established pursuant to section 112 of the CAA. The state-effective rule change was submitted to EPA on February 13, 2001.

(2) Revise the definition of "regulated air pollutant" in 401 KAR 52:001 (previously 401 KAR 50:035, Section 1) to include all HAPs subject to requirements established under section 112 of the CAA in order to ensure permit issuance to all major sources. As

indicated above, Kentucky revised the definition to include HAPs subject to a standard or other requirement established pursuant to section 112. The state-effective rule change was submitted to EPA on February 13, 2001.

(3) Revise Rule 401 KAR 52:020, Section 13(1)(e) (previously 401 KAR 50:035 Section 5(2)(a)) to provide for EPA review of administrative permit amendments incorporating requirements from preconstruction review permits, as required by 40 CFR 70.8. Kentucky responded by revising its rules to allow for EPA review of administrative permit amendments that incorporate preconstruction review permits. The state-effective rule change was submitted to EPA on February 13, 2001.

Kentucky made other program changes after EPA granted interim approval on November 14, 1995. These changes include reorganizing the title V operating permit program requirements and promulgating them in the following new rules on January 15, 2001: 401 KAR 52:001 "Definitions for 401 KAR Chapter 52," 401 KAR 52:020 "Title V permits," 401 KAR 52:050 "Permit application forms," 401 KAR 52:060 "Acid rain permits," and 401 KAR 52:100 "Public, affected state, and U.S. EPA review." The requirements of part 70 are now addressed as follows:

(1) the applicability provisions of 40 CFR 70.3 and 70.4 are addressed in 401 KAR 52:020 Sections 1 and 2;

(2) 401 KAR 52:020 Sections 4–9, 23, and 401 KAR 52:050 address the permit application requirements in 40 CFR 70.5;

(3) the permit content requirements in 40 CFR 70.6 are addressed in 401 KAR 52:001 Section 1; 401 KAR 52:020 Sections 11, 12, 20, and 24; 401 KAR 52:100 Section 12; and Sections 1a–1c of the document entitled "Cabinet Provisions and Procedures for Issuing Title V Permits," which is incorporated by reference in 401 KAR 52:020. However, 401 KAR 52:020, Section 24(1)(d) allows sources ten workdays after an emergency has occurred to submit a written report. Because this provision conflicts with 40 CFR 70.6(g)(3)(iv), EPA regards it as wholly external to the program revisions submitted for approval. Consequently, EPA proposes to take no action on this provision of Kentucky law and the Commonwealth must continue implementing the two-day emergency notification requirement contained in 401 KAR 50:035, Section 4(7)(b)4. of its interimly approved program;

(4) the operational flexibility and off-permit provisions of 40 CFR 70.4(b)(12) and (15), respectively, are addressed in

401 KAR 52:001 Section 1; 401 KAR 52:020 Sections 5, 17, and 18; and Sections 1a–1c of the "Cabinet Provisions and Procedures for Issuing Title V Permits" document;

(5) the permit issuance, renewal, reopenings, and revisions requirements in 40 CFR 70.7 are addressed in 401 KAR 52:020 Sections 3, 7–9, 12–16, 19, and 25; 401 KAR 52:100; and Sections 1a and 2 of the "Cabinet Provisions and Procedures for Issuing Title V Permits" document; and

(6) the requirements in 40 CFR 70.8 regarding permit review by EPA and affected states are addressed in 401 KAR 52:100 and Section 2 of the "Cabinet Provisions and Procedures for Issuing Title V Permits" document.

The new rules, along with sufficient evidence of their procedurally correct adoption, were submitted to EPA on February 13, 2001. A detailed analysis showing how the operating permit program requirements of part 70 are addressed by Kentucky's new rules is available for review at the EPA Region 4 office.

Kentucky also amended its audit privilege and immunity law, KRS 224.01–040, to remove language that restricted its ability to adequately administer and enforce the criminal enforcement, civil penalty, and public access provisions of the title V operating permits program. The law was amended in response to EPA's Notice of Deficiency (see 65 FR 76230, December 6, 2000), and the amendments became effective in June 2001.

#### **What Is Involved in This Proposed Action?**

Kentucky has fulfilled the conditions of the interim approval granted on November 14, 1995, and EPA proposes full approval of Kentucky's title V operating permit program. EPA also proposes approval of the other program changes described above. The regulations in Kentucky's federally approved title V program include 401 KAR 50:038 "Air emissions fee," 401 KAR 52:001 "Definitions for 401 KAR Chapter 52," 401 KAR 52:020 "Title V permits" (except 401 KAR 52:020, Section 24(1)(d)), 401 KAR 52:050 "Permit application forms," 401 KAR 52:060 "Acid rain permits," 401 KAR 52:100 "Public, affected state, and U.S. EPA review," and 401 KAR 50:035, Section 4(7)(b)4.

#### **Administrative Requirements**

##### *A. Request for Public Comments*

EPA requests comments on the program revisions discussed in this proposed action. Copies of the Kentucky

submittals and other supporting documentation used in developing the proposed full approval are contained in a docket file numbered KY-T5-2001-01 that is maintained at the EPA Region 4 office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full approval. The primary purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and (2) to serve as the record in case of judicial review. The docket files are available for public inspection at the location listed under the **ADDRESSES** section of this document. EPA will consider any comments received in writing by October 12, 2001.

#### *B. Executive Order 12866*

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

#### *C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined in Executive Order 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

#### *D. Executive Order 13132*

This rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the

distribution of power and responsibilities between the state and the federal government established in the CAA.

#### *E. Executive Order 13175*

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000).

#### *F. Executive Order 13211*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866.

#### *G. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because operating permit program approvals under section 502 of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### *H. Unfunded Mandates Reform Act*

Under sections 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements.

Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

#### *I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

In reviewing operating permit programs, EPA's role is to approve state choices, provided that they meet the criteria of the CAA and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use VCS, EPA has no authority to disapprove an operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of an operating permit program that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of NTTAA do not apply.

#### *J. Paperwork Reduction Act*

This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### **List of Subjects in 40 CFR Part 70**

Environmental protection,  
Administrative practice and procedure,

Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: September 4, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01–22912 Filed 9–11–01; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 67 and 68

[USCG 2001–10048]

#### Vessel Documentation: “Sold Foreign”

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** The Coast Guard seeks comments from the public on its interpretation of the term “sold foreign”. Its current interpretation may disqualify from eligibility for coastwise trade certain vessels whose ownership has become “foreign” in technical ways. Some affected parties feel that this interpretation imposes a harsh penalty for slight, often unintended foreign involvement while others feel that it just preserves the privilege of coastwise trade for the domestic fleet.

**DATES:** Comments and related material must reach the Docket Management Facility on or before December 11, 2001.

**ADDRESSES:** To make sure your comments and related material do not enter the docket (USCG 2001–10048) more than once, please refer them to the docket and submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this preamble as being

available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For questions on this Request for Comments, call LCDR Don Darcy, Project Manager, Office of Standards Evaluation and Development Division, Coast Guard Headquarters, 202–267–1200. For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, 202–366–5149.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number of this Request for Comments (USCG 2001–10048), indicate the specific question(s) listed under Questions of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. Your comments and materials may influence the interpretation that we propose. We will consider all of them received during the comment period.

The Coast Guard may hold a public meeting. Whether it does will depend on the response to this notice. You may seek a meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that it should hold a public meeting, it will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

The first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended, provides, among other things, that a vessel of more than 200 gross tons as measured

under chapter 143 of Title 46, United States Code (46 U.S.C. 14301 *et seq.*), and otherwise qualified for coastwise trade, may not be documented for coastwise trade if it has been “\* \* \* sold foreign in whole or in part \* \* \*”. The Coast Guard has interpreted the term “sold foreign” to mean that the vessel has transferred from one business entity, to a newly restructured business entity, to (1) an owner who is no longer a U.S. citizen or (2) an owner who is no longer eligible to document a vessel under the laws of the U.S. If the owner is a business entity, it must meet the requirements for documentation under § 12102 of Title 46 U.S.C., and for a coastwise-trade endorsement under § 12106. (There are limited exceptions under the Oil Pollution Act of 1990 (33 U.S.C. 1321) and under the Act of September 2, 1958 (46 App. U.S.C. 883–1).) The Coast Guard has held that, once a business entity no longer meets these statutory requirements, its vessels have “sold foreign.” In the case of a corporation, any vessel transferred to a business entity that does not meet the quorum requirements for a board of directors or that has a noncitizen chairman of the board is permanently barred from coastwise trade. The Coast Guard has held that no business entity can reverse or cure the loss of the privilege of coastwise trade by reorganizing so as to satisfy 46 U.S.C. 12102. The only way a vessel which has run afoul of the strictures of the first proviso has regained the privilege has been through enactment of special legislation.

##### Questions

We especially need the public’s assistance in answering the following questions, and welcome any added information on this topic. In responding to each question, please explain your reasons for each answer as specifically as possible so that we can carefully weigh the consequences and impacts of any actions we may take.

At this time the Coast Guard is reconsidering its interpretation of the effect of the first proviso. For it to do so, it invites comments on the following questions:

1. Should the Coast Guard issue a formal letter-ruling addressing the proposed reorganization of a business entity before the entity undertakes the reorganization?

2.a. If a qualified owner sells a vessel to an owner unqualified because foreign, should the unqualified owner be able to cure the defect through its own reorganization?

b. Should the Coast Guard count as accomplishing a “sale” the

reorganization of an owner that, until the reorganization, qualified to document vessels in accordance with 46 U.S.C. 12102? If so, should the owner be able to cure the defect through a second reorganization?

c. If a business entity can reorganize to satisfy 46 U.S.C. 12102, so as to avoid a permanent loss of the privilege of coastwise trade, should a vessel sold to a natural person other than a citizen be able to regain the privilege upon the naturalization of that person?

3. Should there be a time by which the reorganization posited in paragraph 2.a, the second reorganization posited in paragraph 2.b, or the naturalization posited in paragraph 2.c must either start or finish?

Dated: June 27, 2001.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine, Safety and Environmental Protection.*

[FR Doc. 01-22815 Filed 9-11-01; 8:45 am]

BILLING CODE 4910-15-U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-2057; MM Docket No. 01-217, RM-10236; MM Docket No. 01-218, RM-10237; MM Docket No. 01-219, RM-10238; MM Docket No. 01-220, RM-10239]

**Radio Broadcasting Services; Hollis, OK; Mangum, OK; Rule, TX; and Santa Anna, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes four allotments in Hollis, OK, Mangum, OK, Rule, TX, and Santa Anna, TX. The Commission requests comments on a petition filed by Jeraldine Anderson, proposing the allotment of Channel 274C2 at Hollis, Oklahoma, as the community's second FM allotment. There is currently one vacant FM allotment at Hollis for Channel 223A. Channel 274C2 can be allotted to Hollis in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.7 km (9.7 miles) south of Hollis. The coordinates for Channel 274C2 at Hollis are 34-32-55 North Latitude and 99-56-12 West Longitude. *See*

**SUPPLEMENTARY INFORMATION** *infra*.

**DATES:** Comments must be filed on or before October 22, 2001, and reply comments on or before November 6, 2001.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Jeraldine Anderson, 1702 Cypress Drive, Irving, Texas 75061.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Mass Media Bureau (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket Nos. 01-217, 01-218, 01-219, and 01-220; adopted August 22, 2001, and released August 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, N.W., Washington, D.C. 20036.

The Commission requests comment on a petition filed by Jeraldine Anderson proposing the allotment of Channel 259C2 at Mangum, Oklahoma, as the community's first competing FM transmission service. Channel 259C2 can be allotted to Mangum in compliance with the Commission's minimum distance separation requirements with a site restriction of 25 km (15.5 miles) west of Mangum. The coordinates for Channel 259C2 at Mangum are 34-53-28 North Latitude and 99-46-33 West Longitude.

The Commission further requests comment on a petition filed by Jeraldine Anderson proposing the allotment of Channel 253A at Rule, Texas, as the community's first competing FM transmission service. (A rulemaking is pending in another proceeding to consider allocation of Channel 239A as a first FM transmission service.) Channel 253A can be allotted to Rule in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.2 km (2 miles) southwest of Rule. The coordinates for Channel 253A at Rule are 33-10-17 North Latitude and 99-55-24 West Longitude.

The Commission further requests comment on a petition filed by Jeraldine Anderson proposing the allotment of Channel 282A at Santa Anna, Texas, as the community's first competing FM transmission service. Channel 282A can be allotted to Santa Anna in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 km (5.3 miles)

southeast of Santa Anna. The coordinates for Channel 282A at Rule are 31-40-36 North Latitude and 99-16-25 West Longitude. The proposed allotment will require concurrence by Mexico because Santa Anna is located within 320 kilometers (199 miles) of the Mexican border.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 274C2 at Hollis and by adding Channel 259C2 at Mangum.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Rule, Channel 253A and by adding Channel 282A at Santa Anna.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-22836 Filed 9-11-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-2056, MM Docket No. 01-221, RM-10171]

**Radio Broadcasting Services; Buffalo Gap, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 227A at Buffalo Gap, Texas, as that community's first local FM service. The coordinates for Channel 227A at Buffalo Gap are 32-16-55 and 99-53-54. There is a site restriction 6.5 kilometers (4.03 miles) west of the community.

**DATES:** Comments must be filed on or before October 22, 2001, and reply comments on or before November 11, 2001.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree circle, Dallas, Texas 75214.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-221, adopted August 22, 2001, and released August 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, telephone 202-863-2898, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications

Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Buffalo Gap, Channel 227A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-22835 Filed 9-11-01; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA No. 01-1997; MM Docket No. 01-112; RM-10115]

##### Radio Broadcasting Services; Waitsburg, WA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule, withdrawal.

**SUMMARY:** This document dismisses a petition for rule making filed by Jeffrey Bruton requesting the allotment of Channel 272A at Waitsburg, Washington. See 66 FR 30365, June 6, 2001. Neither Bruton nor any other party filed comments supporting an allotment at Waitsburg. As it is the Commission's policy to refrain from making an allotment absent supporting comments, we will dismiss Bruton's proposal. With this action, this proceeding is terminated.

##### FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 01-112, adopted August 22, 2001, and released August 31, 2001. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY-B402, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-

863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-22833 Filed 9-11-01; 8:45 am]

**BILLING CODE 6712-01-U**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 01-2058; MM Docket No. 01-209, RM-10224; MM Docket No. 01-210, RM-10225; MM Docket No. 01-211, RM-10221; MM Docket No. 01-212, RM-10222; MM Docket No. 01-213, RM-10226; MM Docket No. 01-214, RM-10227; MM Docket No. 01-215, RM-10228; MM Docket No. 01-216, RM-10223]

**Radio Broadcasting Services: Broken Bow, OK; Crowell, TX; Holly Springs, MS; Kiowa, OK; McBain, MI; Menard, TX; Sparkman, AR; and Valliant, OK.**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes new allotments to Broken Bow, OK; Crowell, TX; Holly Springs, MS; Kiowa, OK; McBain, MI; Menard, TX; Sparkman, AR; and Valliant, OK. The Commission requests comments on a petition filed by Maurice Salsa, proposing the allotment of Channel 285A at Broken Bow, Oklahoma, as the community's second local aural transmission service. Channel 285A can be allotted to Broken Bow in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.9 kilometers (3.7 miles) northwest of Broken Bow. The coordinates for Channel 285A at Broken Bow are 34-04-41 North Latitude and 94-45-53 West Longitude. See Supplementary Information.

**DATES:** Comments must be filed on or before October 22, 2001, and reply comments on or before November 6, 2001.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345 (Petitioner for Broken Bow, Oklahoma; Kiowa, Oklahoma; and Valliant, Oklahoma); Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214 (Petitioner for Crowell, Texas; and Menard, Texas); Holly Springs Radio, P.O. Box 165, Winona, Mississippi

(Petitioner for Holly Springs, Mississippi); Arthur Belendiuk, Smithwick & Belendiuk, P.C.; 5028 Wisconsin Avenue, N.W., Suite 301; Washington, D.C. 20016 (Counsel for petitioner for McBain, Michigan); and Big Country Radio, Inc., P.O. Box 11196, College Station, Texas 77842 (Petitioner for Sparkman, Arkansas).

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-209; MM Docket No. 01-210; MM Docket No. 01-211; MM Docket No. 01-212; MM Docket No. 01-213; MM Docket No. 01-214; MM Docket No. 01-215; and MM Docket No. 01-216, adopted August 22, 2001, and released August 31, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 293C3 at Crowell, Texas, as the community's first local aural transmission service. Channel 293C3 can be allotted to Crowell in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) west of Crowell. The coordinates for Channel 293C3 at Crowell are 34-00-00 North Latitude and 99-49-40 West Longitude.

The Commission requests comments on a petition filed by Holly Springs Radio proposing the allotment of Channel 243A at Holly Springs, Mississippi, as that community's fourth local aural FM transmission service. Channel 243A can be allotted to Holly Springs in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.9 miles) southwest of Holly Springs. The coordinates for Channel 243A at Holly Springs are 34-41-32 North Latitude and 89-32-33 West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 254A at Kiowa, Oklahoma, as that community's first local aural

transmission service. Channel 254A can be allotted to Kiowa in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) west of Kiowa. The coordinates for Channel 254A at Kiowa are 34-42-23 North Latitude and 95-58-48 West Longitude.

The Commission requests comments on a petition filed on behalf of McBain Broadcasting Company proposing the allotment of Channel 300A at McBain, Michigan, as that community's first local aural transmission service. Channel 300A can be allotted to McBain in compliance with the Commission's minimum distance separation requirements with a site restriction 9.1 kilometers (5.6 miles) east of McBain. The coordinates for Channel 300A at McBain are 44-12-09 North Latitude and 85-06-02 West Longitude. Since McBain is located within 320 kilometers of the U.S.-Canada border, concurrence of the Canadian Government will be requested for this allotment.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 242A at Menard, Texas, as that community's second local FM transmission service. Channel 242A can be allotted to Menard in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.8 kilometers (7.3 miles) northwest of Menard, Texas. The coordinates for Channel 242A at Menard are 30-59-47 North Latitude and 99-52-06 West Longitude. Since Menard is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission requests comments on a petition filed by Big Country Radio, Inc. proposing the allotment of Channel 259A at Sparkman, Arkansas, as that community's first local aural transmission service. Channel 259A can be allotted to Sparkman in compliance with the Commission's minimum distance separation requirements at the city's reference coordinates. The coordinates for Channel 259A at Sparkman are 33-55-00 North Latitude and 92-50-53 West Longitude.

The Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 234C3 at Valliant, Oklahoma, as that community's first local aural transmission service. Channel 234C3 can be allotted to Valliant in compliance with the Commission's minimum distance separation requirements at the

city's reference coordinates. The coordinates for Channel 234C3 at Valliant are 34-00-06 North Latitude and 95-05-42 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

#### § 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Sparkman, Channel 259A.

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding McBain, Channel 300A.

3. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Channel 243A at Holly Springs.

4. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 285A at Broken Bow; Kiowa, Channel 254A; and Valliant, Channel 234C3.

5. Section 73.202(b) of the Table of FM Allotments under Texas, is amended by adding Crowell, Channel 293C3, and Channel 242A at Menard.

Federal Communications Commission.

**John A. Karousos,**

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-22832 Filed 9-11-01; 8:45 am]

**BILLING CODE 6712-01-P**

# FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 90

[WT Docket No. 01-146; RM-9966; FCC 01-199]

### Amendment of Part 90 of the Commission's Rules and Policies for Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450-470 MHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes changes to the Commission's Rules concerning low power operations in the private land mobile radio (PLMR) 450-470 MHz band. Many of these proposals reflect a consensus plan and are intended to address a diversity of low power communication requirements.

**DATES:** Comments are due on or before October 12, 2001; reply comments are due on or before November 13, 2001.

**ADDRESSES:** Comments should be filed to the Commission's Secretary, Magalie Roman Salas, Office of Secretary, Federal Communications Commission, 445 12th St., SW., Room TW-A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at [www.fcc.gov/e-file/ecfs.html](http://www.fcc.gov/e-file/ecfs.html).

**FOR FURTHER INFORMATION CONTACT:** Guy Benson, Esq. (202) 418-2946, <[gbenson@fcc.gov](mailto:gbenson@fcc.gov)>, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rule Making*, (NPRM), FCC 01-199 in WT Docket No. 01-146, adopted on July 2, 2001, and released on July 24, 2001. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365, [bmillin@fcc.gov](mailto:bmillin@fcc.gov).

## Summary of the Notice of Proposed Rule Making

1. Section 90.267 of the Commission's Rules provides that any regularly assignable channel in the 450-470 MHz PLMR band may be designated by the frequency coordinators as a low power channel in a defined geographic area. Low power stations authorized under this section are limited to two (2) watts output power. The Low Power Plan currently in effect designates 104 "12.5 kHz offset" channel pairs (hereinafter "channel pairs") for low power operation nationwide: ninety (90) in the Industrial/Business Pool and fourteen (14) in the Public Safety Pool. The 6.25 kHz "drop in" channels directly adjacent to each designated 12.5 kHz channel are also designated for low power use.

2. On September 11, 2000, the Land Mobile Communications Council (LMCC) filed a Petition for Rule Making requesting the commencement of a proceeding to consider revisions to the Commission's Rules and policies for low power operations in the 450-470 MHz band. The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. LMCC's membership includes all of the Commission's certified part 90 frequency coordinators. The Petition for Rule Making reflects the LMCC's Consensus Plan for low power PLMR frequencies in 450-470 MHz band. This *Notice of Proposed Rule Making* seeks comment on the proposals set forth in the LMCC's Petition as well as other matters related to low power operations in the private land mobile radio (PLMR) 450-470 MHz band.

3. For the ninety (90) Industrial/Business Pool channel pairs, the Commission proposes to adopt the LMCC's proposal to divide these channel pairs into four groups (A, B, C and D) each with differing technical and operational limitations. Group A consisting of fifty (50) channel pairs, would be allowed a maximum power of 20 watts ERP for base stations and 5 watts total power output (TPO) for mobile/portable units. In addition, antenna height for fixed stations would be restricted to 23 meters (75 feet above ground level). Forty (40) of the fifty (50) channel pairs in Group A would be designated for low power use only within 80 km (50 miles) of the top 100 urban areas. Outside of these areas, the 40 channel pairs would be available for use at higher power limits. The ten (10) remaining Group A channel pairs would

be designated nationwide for low power (20 watts/5 watts) operation, and would not be available for higher power use outside the top 100 urban areas. The Commission seeks comment as to, where higher power is proposed outside the top 100 urban areas, whether an intermediate power (such as 21-100 watts) should be considered instead. The Commission also seeks comment on how to define the top 100 urban areas.

4. Additionally, the Commission seeks comment on whether to amend the rules so that ten (10) Industrial/Business Pool channel pairs (Group B) would be restricted to low power non-voice operations, and whether voice operations should be allowed on a secondary, non-interfering basis to data.

5. The Commission also seeks comment on whether to amend the rules so that twenty-five (25) channel pairs (Group C) would be available for non-coordinated, itinerant use. Four of the frequencies that LMCC suggested for Group C, however, are currently designated under 47 C.F.R. part 90 for dockside operations on a primary basis. These four frequencies are authorized for mobile operation for radio remote control and telemetering functions, and also may be operated in the continuous carrier transmit mode. We do not believe that sharing between these currently authorized uses and the proposed non-coordinated, itinerant operations is advisable due to the potential for harmful interference. Consequently, we seek comment as to what alternate channels might replace the four frequencies listed by LMCC. Also, the Commission tentatively concludes that ten channel pairs that LMCC suggested for Group C should not be made available for such itinerant use until the end of the wireless medical telemetry transition period (October 2003).

6. The Commission also seeks comment on LMCC's suggestion to retain current rules for the five (5) channel pairs that comprise Group D. Current rules designate these channels, in all areas or specified areas of the nation, for central station alarm use.

7. For the fourteen (14) Public Safety Pool channel pairs, the Commission seeks comment on whether to amend the rules to increase the maximum operating power for the fourteen (14) channel pairs allocated to the Public Safety Pool to five (5) watts TPO.

8. The Commission seeks comment on a number of issues related to LMCC's Petition/Consensus Plan and the Commission's low power rules and policies. For example, comment is sought on whether to amend the rules to codify the Consensus Plan. We also

ask questions about whether to use "effective radiated power" or "total power output" for power limitations. The Commission seeks comment on whether to amend the rules to limit low power, non-voice communications to the ten channels in Group B, and whether Group A and/or C channels should be designated primarily for voice operations, with non-voice operations authorized on a secondary basis in either group.

9. Finally, the Commission seeks comment on how to treat entities licensed for high power operation (as well as other incumbents) on the channel pairs that are specifically designated for low power operation.

### Regulatory Flexibility Act

10. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the *Notice of Proposed Rule Making*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this *Notice of Proposed Rule Making*.

### Reason for, and Objectives of, the R&O

11. The Commission tasked the PLMR frequency coordinators to develop a plan for low power operations, through industry consensus, on what was formerly known as the 450–470 MHz low power offset channels. On June 4, 1997, the Land Mobile Communications Council (LMCC) filed this plan (Consensus Plan). Because the LMCC's Consensus Plan required changes to the Commission's Rules, on September 11, 2000, the LMCC submitted a petition for rule making in which it asks the Commission to adopt these rule changes. Therefore, the Commission proposes to amend part 90 of its rules in order to effectuate the changes suggested in the Consensus Plan.

12. These rule changes are needed in order to facilitate the viability of important low power operations in the 450–470 MHz band. Previously, low power operators were licensed on channels that were 12.5 kHz removed from regularly assignable channels in this band ("12.5 kHz offset channels"). These offset channels, however, were reclassified by the Commission for high power operation. Because of the continuing need for low power channels, we believe that implementation of the rule changes proposed in this Notice is in the public interest.

### Legal Basis

13. Authority for the proposed rules included in this issuance of this Notice is contained in Sections 1, 4(i), 302, 303(f), and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 1, 154(i), 302, 303(f) and (r), and 332.

### Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

14. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (ninety-one percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

15. Public Safety radio services and Governmental entities. As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. The RFA also includes

small governmental entities as a part of the regulatory flexibility analysis. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities.

16. Estimates for PLMR Licensees. Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more than 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

17. Equipment Manufacturers. The Commission anticipates that radio equipment manufacturers will be affected by the proposals in this proceeding. According to the SBA's regulations, a radio and television broadcasting and communications equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

### *Reporting, Recordkeeping, and Other Compliance Requirements*

18. Reporting, record keeping, and compliance requirements under these proposed rules are nominal. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rule making proceeding.

### *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule or any part thereof for small entities.

20. Regarding the proposal to increase the power limits and antenna height for low power users operating on the fifty channels in Group A, there should be no significant adverse impact on small entities. Although increasing the power and antenna height limits for low power users on these channels could decrease the number of operators possible in a given area, the Commission believes that the need for higher power and antenna height on these channels outweighs the potential losses. An alternative to this proposal would be to maintain the current power restriction of 2 watts output power and 7 meters antenna height, or impose power limitations less than 20 watts for base stations and 5 watts for mobile/portable stations and less than 23 meters antenna height above ground level. These alternatives, however, would not address the need, especially in hostile communications areas, for more than 2 watts output power and antenna heights of 7 meters.

21. In addition, regarding the proposal to designate 25 channels for low power, itinerant use in Group C, incumbent licensees, some of which may be small entities, could face interference from itinerant users that will not be required to coordinate their operations through a certified frequency coordinator. Such potential interference, however, is balanced against the need for itinerant operations in the PLMR services. In this

connection, small businesses that require itinerant operations will be eligible for these channels and may benefit from the proposal. Although comment is sought as to how to treat incumbents generally in Group C, commenters should specifically discuss those incumbents that are considered to be small businesses.

22. Regarding the proposal to require manufacturers of radios that are capable of working on these Group C channels to construct the radios so that they only work on these 25 channels and other UHF color dot and star dot frequencies, there should be no significant adverse impact on small entities. An alternative to this proposal would be to not require manufacturers to construct the radios so as to limit the frequencies that they are capable of working on. This alternative would not, however, help protect full power coordinated channels from additional co-channel conflicts that might occur from uncoordinated users.

23. Regarding the proposal to allow 5 watts ERP for the fourteen channels in the Public Safety Pool, there should be no significant adverse impact on small entities. An alternative to this proposal would be to maintain the current limitation of 2 watts output power or to impose a power limitation of less than 5 watts ERP. Neither of these alternatives, however, would be sufficient to promote flexibility for Public Safety Pool licensees that require more than 2 watts output power for their operations.

24. Finally, comment is sought on how the changes proposed in the Notice will effect small entities.

### *Report to Congress*

25. The Commission will send a copy of the *NPRM*, including this *IRFA*, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *NPRM*, including the *IRFA*, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *NPRM* and *IRFA* (or summaries thereof) will also be published in the **Federal Register**.

### **Administrative Matters**

#### *Ex Parte Rules—Permit-but-Disclose Proceeding*

26. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, if they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1200(a), 1.1203, and 1.1206.

### *Alternative Formats*

27. Alternative formats (computer diskette, large print, audio cassette and Braille) are available from Brian Millin at (202) 418-7426, TTY (202) 418-7365, or at [bmillin@fcc.gov](mailto:bmillin@fcc.gov). This Notice can also be downloaded at <http://www.fcc.gov/dtf/>.

### **Pleading Dates**

28. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 12, 2001 and reply comments on or before November 13, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), <http://www.fcc.gov/e-file/ecfs.html>, or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 23,121 (1998).

29. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

30. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

### *Ordering Clauses*

31. Accordingly, *It is ordered* that, pursuant to Sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, the Petition for Rule Making filed by the Land Mobile Communications Council

on September 11, 2000, Is Granted to the extent indicated herein.

32. It Is Further Ordered that, pursuant to Sections 1, 4(i), 302, 303(f) and (r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 154(i), 302, 303(f) and (r), 332, Notice is Hereby given of the proposed regulatory changes described in this Notice of Proposed Rule Making, and that Comment Is Sought on these proposals.

33. It Is Further Ordered that the Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this *Notice of Proposed Rule Making*, WT Docket No. 01-146, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act.

#### List of Subjects in 47 CFR Part 90

Communications equipment, Radio  
Federal Communications Commission.  
**Magalie Roman Salas,**  
*Secretary.*

For reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.20 is amended as follows:

A. The table in paragraph (c)(3) is amended by revising the entries for the following frequencies to include new limitation number 84 (Note: In the final rule, we will set out the full entry for each frequency listed):

##### § 90.20 Public Safety Pool.

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

453.03125 MHz, 453.0375 MHz,  
453.04375 MHz, 453.05625 MHz,  
453.0625 MHz, 453.06875 MHz,  
453.08125 MHz, 453.0875 MHz,  
453.09375 MHz, 453.10625 MHz,  
453.1125 MHz, 453.11875 MHz,  
453.13125 MHz, 453.1375 MHz,  
453.14375 MHz, 453.88125 MHz,  
453.8875 MHz, 453.89375 MHz,  
453.90625 MHz, 453.9125 MHz,  
453.91875 MHz, 453.93125 MHz,  
453.9375 MHz, 453.94375 MHz,  
453.95625 MHz, 453.9625 MHz,  
453.96875 MHz, 453.98125 MHz,

453.9875 MHz, 453.99375 MHz,  
458.03125 MHz, 458.0375 MHz,  
458.04375 MHz, 458.05625 MHz,  
458.0625 MHz, 458.06875 MHz,  
458.08125 MHz, 458.0875 MHz,  
458.09375 MHz, 458.10625 MHz,  
458.1125 MHz, 458.11875 MHz,  
458.13125 MHz, 458.1375 MHz,  
458.14375 MHz, 458.88125 MHz,  
458.8875 MHz, 458.89375 MHz,  
458.90625 MHz, 458.9125 MHz,  
458.91875 MHz, 458.93125 MHz,  
458.9375 MHz, 458.94375 MHz,  
458.95625 MHz, 458.9625 MHz,  
458.96875 MHz, 458.98125 MHz,  
458.9875 MHz, 458.99375 MHz,  
460.48125 MHz, 460.4875 MHz,  
460.49375 MHz, 460.50625 MHz,  
460.5125 MHz, 460.51875 MHz,  
460.53125 MHz, 460.5375 MHz,  
460.54375 MHz, 460.55625 MHz,  
460.5625 MHz, 460.56875 MHz,  
465.48125 MHz, 465.4875 MHz,  
465.49375 MHz, 465.50625 MHz,  
465.5125 MHz, 465.51875 MHz,  
465.53125 MHz, 465.5375 MHz,  
465.54375 MHz, 465.55625 MHz,  
465.5625 MHz, 465.56875 MHz.

B. A new paragraph (d)(84) is added to read as follows:

##### § 90.20 Public Safety Pool.

\* \* \* \* \*

(d) \* \* \*

(84) These frequencies are low power frequencies governed by § 90.267.

3. Section 90.35(b)(3) is amended as follows:

##### § 90.35 Industrial/Business Pool.

A. The table in paragraph (b)(3) is amended by revising the entries for the following frequencies to include new limitation number 83 (Note: In the final rule, we will set out the full entry for each frequency listed):

451.18125 MHz, 451.1875 MHz,  
451.19375 MHz, 451.23125 MHz,  
451.2375 MHz, 451.24375 MHz,  
451.28125 MHz, 451.2875 MHz,  
451.29375 MHz, 451.30625 MHz,  
451.3125 MHz, 451.31875 MHz,  
451.33125 MHz, 451.3375 MHz,  
451.34375 MHz, 451.35625 MHz,  
451.3625 MHz, 451.36875 MHz,  
451.38125 MHz, 451.3875 MHz,  
451.39375 MHz, 451.40625 MHz,  
451.4125 MHz, 451.41875 MHz,  
451.43125 MHz, 451.4375 MHz,  
451.44375 MHz, 451.45625 MHz,  
451.4625 MHz, 451.46875 MHz,  
451.48125 MHz, 451.4875 MHz,  
451.49375 MHz, 451.50625 MHz,  
451.5125 MHz, 451.51875 MHz,  
451.53125 MHz, 451.5375 MHz,  
451.54375 MHz, 451.55625 MHz,  
451.5625 MHz, 451.56875 MHz,  
451.58125 MHz, 451.5875 MHz,  
451.59375 MHz, 451.60625 MHz,

451.6125 MHz, 451.61875 MHz,  
451.63125 MHz, 451.6375 MHz,  
451.64375 MHz, 451.65625 MHz,  
451.6625 MHz, 451.66875 MHz,  
451.68125 MHz, 451.6875 MHz,  
451.69375 MHz, 451.70625 MHz,  
451.7125 MHz, 451.71875 MHz,  
451.73125 MHz, 451.7375 MHz,  
451.74375 MHz, 451.75625 MHz,  
451.7625 MHz, 451.76875 MHz,  
452.03125 MHz, 452.0375 MHz,  
452.04375 MHz, 452.05625 MHz,  
452.0625 MHz, 452.06875 MHz,  
452.08125 MHz, 452.0875 MHz,  
452.09375 MHz, 452.10625 MHz,  
452.1125 MHz, 452.11875 MHz,  
452.13125 MHz, 452.1375 MHz,  
452.14375 MHz, 452.15625 MHz,  
452.1625 MHz, 452.16875 MHz,  
452.18125 MHz, 452.1875 MHz,  
452.19375 MHz, 452.28125 MHz,  
452.2875 MHz, 452.29375 MHz,  
452.30625 MHz, 452.3125 MHz,  
452.31875 MHz, 452.40625 MHz,  
452.4125 MHz, 452.41875 MHz,  
452.48125 MHz, 452.4875 MHz,  
452.49375 MHz, 452.50625 MHz,  
452.5125 MHz, 452.51875 MHz,  
452.53125 MHz, 452.5375 MHz,  
452.54375 MHz,  
452.63125 MHz, 452.6375 MHz,  
452.64375 MHz, 452.65625 MHz,  
452.6625 MHz, 452.66875 MHz,  
452.68125 MHz, 452.6875 MHz,  
452.69375 MHz, 452.70625 MHz,  
452.7125 MHz, 452.71875 MHz,  
452.75625 MHz, 452.7625 MHz,  
452.76875 MHz, 452.78125 MHz,  
452.7875 MHz, 452.79375 MHz,  
452.80625 MHz, 452.8125 MHz,  
452.81875 MHz, 452.83125 MHz,  
452.8375 MHz, 452.84375 MHz,  
452.85625 MHz, 452.8625 MHz,  
452.86875 MHz, 452.88125 MHz,  
452.8875 MHz, 452.89375 MHz,  
452.98125 MHz, 452.9875 MHz,  
452.99375 MHz, 456.18125 MHz,  
456.1875 MHz, 456.19375 MHz,  
456.23125 MHz, 456.2375 MHz,  
456.24375 MHz, 456.28125 MHz,  
456.2875 MHz, 456.29375 MHz,  
456.30625 MHz, 456.3125 MHz,  
456.31875 MHz, 456.33125 MHz,  
456.3375 MHz, 456.34375 MHz,  
456.35625 MHz, 456.3625 MHz,  
456.36875 MHz, 456.38125 MHz,  
456.3875 MHz, 456.39375 MHz,  
456.40625 MHz, 456.4125 MHz,  
456.41875 MHz, 456.43125 MHz,  
456.4375 MHz, 456.44375 MHz,  
456.45625 MHz, 456.4675 MHz,  
456.46875 MHz, 456.48125 MHz,  
456.4875 MHz, 456.49375 MHz,  
456.50625 MHz, 456.5125 MHz,  
456.51875 MHz, 456.53125 MHz,  
456.5375 MHz, 456.54375 MHz,  
456.55625 MHz, 456.5625 MHz,  
456.56875 MHz, 456.58125 MHz,

456.5875 MHz, 456.59375 MHz,  
 456.60625 MHz, 456.6125 MHz,  
 456.61875 MHz, 456.63125 MHz,  
 456.6375 MHz, 456.64375 MHz,  
 456.65625 MHz, 456.6625 MHz,  
 456.66875 MHz, 456.68125 MHz,  
 456.6875 MHz, 456.69375 MHz,  
 456.70625 MHz, 456.7125 MHz,  
 456.71875 MHz, 456.73125 MHz,  
 456.7375 MHz, 456.74375 MHz,  
 456.75625 MHz, 456.7625 MHz,  
 456.76875 MHz, 457.03125 MHz,  
 457.0375 MHz, 457.04375 MHz,  
 457.05625 MHz, 457.0625 MHz,  
 457.06875 MHz,  
 457.08125 MHz, 457.0875 MHz,  
 457.09375 MHz, 457.10625 MHz,  
 457.1125 MHz, 457.11875 MHz,  
 457.13125 MHz, 457.1375 MHz,  
 457.14375 MHz, 457.15625 MHz,  
 457.1625 MHz, 457.16875 MHz,  
 457.18125 MHz, 457.1875 MHz,  
 457.19375 MHz, 457.28125 MHz,  
 457.2875 MHz, 457.29375 MHz,  
 457.30625 MHz, 457.3125 MHz,  
 457.31875 MHz, 457.40625 MHz,  
 457.4125 MHz, 457.41875 MHz,  
 457.48125 MHz, 457.4875 MHz,  
 457.49375 MHz, 457.50625 MHz,  
 457.5125 MHz, 457.51875 MHz,  
 457.53125 MHz, 457.5375 MHz,  
 457.54375 MHz, 457.63125 MHz,  
 457.6375 MHz, 457.64375 MHz,  
 457.65625 MHz, 457.6625 MHz,  
 457.66875 MHz, 457.68125 MHz,  
 457.6875 MHz, 457.69375 MHz,  
 457.70625 MHz, 457.7125 MHz,  
 457.71875 MHz, 457.75625 MHz,  
 457.7625 MHz, 457.76875 MHz,  
 457.78125 MHz, 457.7875 MHz,  
 457.79375 MHz, 457.80625 MHz,  
 457.8125 MHz, 457.81875 MHz,  
 457.83125 MHz, 457.8375 MHz,  
 457.84375 MHz, 457.85625 MHz,  
 457.8625 MHz, 457.86875 MHz,  
 457.88125 MHz, 457.8875 MHz,  
 457.89375 MHz, 457.98125 MHz,  
 457.9875 MHz, 457.99375 MHz,  
 460.90625 MHz, 460.9125 MHz,  
 460.91875 MHz, 460.93125 MHz,  
 460.9375 MHz, 460.94375 MHz,  
 460.95625 MHz, 460.9625 MHz,  
 460.96875 MHz, 460.98125 MHz,  
 460.9875 MHz, 460.99375 MHz,  
 461.00625 MHz, 461.0125 MHz,  
 461.01875 MHz, 461.03125 MHz,  
 461.0375 MHz, 461.04375 MHz,  
 461.05625 MHz, 461.0625 MHz,  
 461.06875 MHz, 461.08125 MHz,  
 461.0875 MHz, 461.09375 MHz,  
 461.10625 MHz, 461.1125 MHz,  
 461.11875 MHz, 461.13125 MHz,  
 461.1375 MHz, 461.14375 MHz,  
 461.15625 MHz, 461.1625 MHz,  
 461.16875 MHz, 461.18125 MHz,  
 461.1875 MHz, 461.19375 MHz,  
 461.20625 MHz, 461.2125 MHz,  
 461.21875 MHz,

461.23125 MHz, 461.2375 MHz,  
 461.24375 MHz, 461.25625 MHz,  
 461.2625 MHz, 461.26875 MHz,  
 461.28125 MHz, 461.2875 MHz,  
 461.29375 MHz, 461.30625 MHz,  
 461.3125 MHz, 461.31875 MHz,  
 461.33125 MHz, 461.3375 MHz,  
 461.34375 MHz, 461.35625 MHz,  
 461.3625 MHz, 461.36875 MHz,  
 462.18125 MHz, 462.1875 MHz,  
 462.19375 MHz, 462.20625 MHz,  
 462.2125 MHz, 462.21875 MHz,  
 462.23152 MHz, 462.2375 MHz,  
 462.24375 MHz, 462.25625 MHz,  
 462.2625 MHz, 462.26875 MHz,  
 462.28125 MHz, 462.2875 MHz,  
 462.29375 MHz, 462.30625 MHz,  
 462.3125 MHz, 462.31875 MHz,  
 462.33125 MHz, 462.3375 MHz,  
 462.34375 MHz, 462.35625 MHz,  
 462.3625 MHz, 462.36875 MHz,  
 462.38125 MHz, 462.3875 MHz,  
 462.39375 MHz, 462.40625 MHz,  
 462.4125 MHz, 462.41875 MHz,  
 462.43125 MHz, 462.4375 MHz,  
 462.44375 MHz, 462.45625 MHz,  
 462.4625 MHz, 462.46875 MHz,  
 462.48125 MHz, 462.4875 MHz,  
 462.49375 MHz, 462.50625 MHz,  
 462.5125 MHz, 462.51875 MHz,  
 462.8625 MHz, 462.8875 MHz,  
 462.9125 MHz, 464.48125 MHz,  
 464.4875 MHz, 464.5125 MHz,  
 464.51875 MHz, 464.53125 MHz,  
 464.5375 MHz, 464.5625 MHz,  
 464.56875 MHz, 465.90625 MHz,  
 465.9125 MHz, 465.91875 MHz,  
 465.93125 MHz, 465.9375 MHz,  
 465.94375 MHz, 465.95625 MHz,  
 465.9625 MHz, 465.96875 MHz,  
 465.98125 MHz, 465.9875 MHz,  
 465.99375 MHz, 466.00625 MHz,  
 466.0125 MHz, 466.01875 MHz,  
 466.03125 MHz, 466.0375 MHz,  
 466.04375 MHz, 466.05625 MHz,  
 466.0625 MHz, 466.06875 MHz,  
 466.08125 MHz, 466.0875 MHz,  
 466.09375 MHz, 466.10625 MHz,  
 466.1125 MHz, 466.11875 MHz,  
 466.13125 MHz, 466.1375 MHz,  
 466.14375 MHz, 466.15625 MHz,  
 466.1625 MHz, 466.16875 MHz,  
 466.18125 MHz,  
 466.1875 MHz, 466.19375 MHz,  
 466.20625 MHz, 466.2125 MHz,  
 466.21875 MHz, 466.23125 MHz,  
 466.2375 MHz, 466.24375 MHz,  
 466.25625 MHz, 466.2625 MHz,  
 466.26875 MHz, 466.28125 MHz,  
 466.2875 MHz, 466.29375 MHz,  
 466.30625 MHz, 466.3125 MHz,  
 466.31875 MHz, 466.33125 MHz,  
 466.3375 MHz, 466.34375 MHz,  
 466.35625 MHz, 466.3625 MHz,  
 466.36875 MHz, 467.18125 MHz,  
 467.1875 MHz, 467.19375 MHz,  
 467.20625 MHz, 467.2125 MHz,  
 467.21875 MHz, 467.23152 MHz,

467.2375 MHz, 467.24375 MHz,  
 467.25625 MHz, 467.2625 MHz,  
 467.26875 MHz, 467.28125 MHz,  
 467.2875 MHz, 467.29375 MHz,  
 467.30625 MHz, 467.3125 MHz,  
 467.31875 MHz, 467.33125 MHz,  
 467.3375 MHz, 467.34375 MHz,  
 467.35625 MHz, 467.3625 MHz,  
 467.36875 MHz, 467.38125 MHz,  
 467.3875 MHz, 467.39375 MHz,  
 467.40625 MHz, 467.4125 MHz,  
 467.41875 MHz, 467.43125 MHz,  
 467.4375 MHz, 467.44375 MHz,  
 467.45625 MHz, 467.4675 MHz,  
 467.46875 MHz, 467.48125 MHz,  
 467.4875 MHz, 467.49375 MHz,  
 467.50625 MHz, 467.5125 MHz,  
 467.51875 MHz, 467.8625 MHz,  
 467.8875 MHz, 467.9125 MHz,  
 469.48125 MHz, 469.4875 MHz,  
 469.5125 MHz, 469.51875 MHz,  
 469.53125 MHz, 469.5375 MHz,  
 469.5625 MHz, 469.56875 MHz.

B. A new paragraph (c)(83) is added to read as follows:

**§ 90.35 Industrial/business pool.**

\* \* \* \* \*

(c) \* \* \*

(83) These frequencies are low power frequencies governed by § 90.267.

4. Section 90.35 is amended by revising paragraph (c)(67) to read as follows:

**§ 90.35 Industrial/Business Pool.**

\* \* \* \* \*

(c) \* \* \*

(67) Use of this frequency is on a secondary basis and subject to the provisions of § 90.267(a)(4), (a)(7), (a)(8) and (a)(9).

5. Section 90.203 is amended by adding paragraph (m) to read as follows:

**§ 90.203 Certification required.**

\* \* \* \* \*

(m) Transmitters for use on low power itinerant channels must be certificated, in accordance with the provisions of Part 2 of the Commission's Rules, and designed so that their operation is limited to the frequencies listed in § 90.267(a)(4) and/or frequencies 464.500 MHz, 464.550 MHz, 467.850 MHz, 467.875 MHz, 467.900 MHz, and 467.925 MHz.

6. Section 90.267 is amended by revising paragraph (a) to read as follows:

**§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low power use.**

(a) The following frequencies between 450–470 MHz are designated for low-power use subject to the provisions of this section. Pairs are shown but single frequencies are available for simplex operations.

(1) Group A1 Frequencies. The Industrial/Business Pool frequencies listed in Group A1 are available on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b), as follows:

(i) Within 80 kilometers of the top [xxx] urban areas, operation on these

frequencies is limited to 5 watts output power for mobile stations and 20 watts effective radiated power for fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

(ii) Outside 80 kilometers of the top [xxx] urban areas, operation on these frequencies is available for full power operation pursuant to the power and antenna height limits listed in § 90.205.

#### INDUSTRIAL/BUSINESS POOL GROUP A1 LOW POWER FREQUENCIES

451.18125	451.58125	452.10625	452.70625
456.18125	456.58125	457.10625	457.70625
451.1875	451.5875	452.1125	452.7125
456.1875	456.5875	457.1125	457.7125
451.19375	451.59375	452.11875	452.71875
456.19375	456.59375	457.11875	457.71875
451.28125	451.60625	452.13125	452.78125
456.28125	456.60625	457.13125	457.78125
451.2875	451.6125	452.1375	452.7875
456.2875	456.6125	457.1375	457.7875
451.29375	451.61875	452.14375	452.79375
456.29375	456.61875	457.14375	457.79375
451.30625	451.65625	452.15625	452.80625
456.30625	456.65625	457.15625	457.80625
451.3125	451.6625	452.1625	452.8125
456.3125	456.6625	457.1625	457.8125
451.31875	451.66875	452.16875	452.81875
456.31875	456.66875	457.16875	457.81875
451.35625	451.68125	452.18125	452.83125
456.35625	456.68125	457.18125	457.83125
451.3625	451.6875	452.1875	452.8375
456.3625	456.6875	457.1875	457.8375
451.36875	451.69375	452.19375	453.84375
456.36875	456.69375	457.19375	457.84375
451.38125	451.70625	452.28125	452.88125
456.38125	456.70625	457.28125	457.88125
451.3875	451.7125	452.2875	452.8875
456.3875	456.7125	457.2875	457.8875
451.39375	451.71875	452.29375	452.89375
456.39375	456.71875	457.29375	457.89375
451.40625	451.73125	452.48125	452.98125
456.40625	456.73125	457.48125	457.98125
451.4125	451.7375	452.4875	452.9875
456.4125	456.7375	457.4875	457.9875
451.41875	451.74375	452.49375	452.99375
456.41875	456.74375	457.49375	457.99375
451.45625	451.75625	452.53125	462.18125
456.45625	456.75625	457.53125	467.18125
451.4625	451.7625	452.5375	462.1875
456.4625	456.7625	457.5375	467.1875
451.46875	451.76825	452.54375	462.19375
456.46875	456.76875	457.54375	467.19375
451.48125	452.03125	452.63125	462.45625
456.48125	457.03125	457.63125	467.45625
451.4875	452.0375	452.6375	462.4625
456.4875	457.0375	457.6375	467.4625
451.49375	452.04375	452.64375	462.46875
456.49375	457.04375	457.64375	467.46875
451.50625	452.05625	452.65625	462.48125
456.50625	457.05625	457.65625	467.48125
451.5152	452.0625	452.6625	462.4875
456.5125	457.0625	457.6625	467.4875
451.51875	452.06875	452.66875	462.49375
456.51875	457.06875	457.66875	467.49375
451.55625	452.08125	452.68125	462.50625
456.55625	457.08125	457.68125	467.50625
451.5625	452.0875	452.6875	462.5125
456.5625	457.0875	457.6875	467.5125
451.56875	452.09375	452.69375	462.51875
456.56875	457.09375	457.69375	467.51875

(2) Group A2 Frequencies. The Industrial/Business Pool frequencies listed in Group A2 are available nationwide on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b). Operation on these frequencies is limited to 5 watts output power for mobile stations and 20 watts effective radiated power for fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

## INDUSTRIAL/BUSINESS POOL GROUP A2 LOW POWER FREQUENCIES

451.23125	451.53125	452.40625	452.85625
456.23125	456.53125	457.40625	457.85625
451.2375	451.5375	452.4125	452.8625
456.2375	456.5375	457.4125	457.8625
451.24375	451.54375	452.41875	452.86875
456.24375	456.54375	457.41875	457.86875
451.33125	451.63125	452.50625	
456.33125	456.63125	457.50625	
451.3375	451.6375	452.5125	
456.3375	456.6375	457.5125	
451.34375	451.64375	452.51875	
456.34375	456.64375	457.51875	
451.43125	452.30625	452.75625	
456.43125	457.30625	457.75625	
451.4375	452.3125	452.7625	
456.4375	457.3125	457.7625	
451.44375	452.31875	452.76875	
456.44375	457.31875	457.76875	

(3) Group B Frequencies. The Industrial/Business Pool frequencies listed in Group B are available nationwide on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b), for data operations. Operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

## INDUSTRIAL/BUSINESS POOL GROUP B LOW POWER FREQUENCIES

462.20625	462.28125	462.35625	462.43125
467.20625	467.28125	467.35625	467.43125
462.2125	462.2875	462.3625	462.4375
467.2125	467.2875	467.3625	467.4375
462.21875	462.29375	462.36875	462.44375
467.21875	467.29375	467.36875	467.44375
462.23152	462.30625	462.38125	
467.23152	467.30625	467.38125	
462.2375	462.3125	462.3875	
467.2375	467.3125	467.3875	
462.24375	462.31875	462.39375	
467.24375	467.31875	467.39375	
462.25625	462.33125	462.40625	
467.25625	467.33125	467.40625	
462.2625	462.3375	462.4125	
467.2625	467.3375	467.4125	
462.26875	462.34375	462.41875	
467.26875	467.34375	467.41875	

(4) Group C Frequencies. The Industrial/Business Pool frequencies listed in Group C are available nationwide for non-coordinated itinerant use. Operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. A maximum antenna height of 7 meters (20 feet) above ground is authorized for fixed stations. The frequencies in Group C that are subject to the provisions of § 90.35(c)(67) will not be available for itinerant use until October 17, 2003.

## INDUSTRIAL/BUSINESS POOL GROUP C LOW POWER FREQUENCIES

461.03125	461.15625	461.28125	
466.03125	466.15625	466.28125	
461.0375	461.1625	461.2875	462.8625
466.0375	466.1625	466.2875	467.8625
461.04375	461.16875	461.29375	462.8875
466.04375	466.16875	466.29375	467.8875
461.05625	461.18125	461.30625	462.9125
466.05625	466.18125	466.30625	467.9125
461.0625	461.1875	461.3125	464.48125
466.0625	466.1875	466.3125	469.48125
461.06875	461.19375	461.31875	464.4875
466.06875	466.19375	466.31875	469.4875
461.08125	461.20625	461.33125	464.5125
466.08125	466.20625	466.33125	469.5125
461.0875	461.2125	461.3375	464.51875
466.0875	466.2125	466.3375	469.51875
461.09375	461.21875	461.34375	464.53125
466.09375	466.21875	466.34375	469.53125
461.10625	461.23125	461.35625	464.5375

## INDUSTRIAL/BUSINESS POOL GROUP C LOW POWER FREQUENCIES—Continued

466.10625	466.23125	466.35625	469.5375
461.1125	461.2375	461.3625	464.5625
466.1125	466.2375	466.3625	469.5625
461.11875	461.24375	461.36875	464.56875
466.11875	466.24375	466.36875	469.56875
461.13125	461.25625		
466.13125	466.25625		
461.1375	461.2625		
466.1375	466.2625		
461.14375	461.26875		
466.14375	466.26875		

(5) Group D Frequencies. The Industrial/Business Pool frequencies listed in Group D are available for central station alarm operations in urban areas as defined in § 90.35(c)(63) and § 90.35(c)(64). Central alarm stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure. Outside the urban areas described in § 90.35(c)(63), Group D frequencies are available for general industrial/business use on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b). Non-central station alarm operation on these frequencies is limited to 2 watts output power for mobile or fixed stations. Non-central station alarm stations are limited to a maximum antenna height of 7 meters (20 feet) above ground.

## INDUSTRIAL/BUSINESS POOL GROUP D LOW POWER FREQUENCIES

460.90625	460.95625	461.00625
465.90625	465.95625	466.00625
460.9125	460.9625	461.0125
465.9125	465.9625	466.0125
460.91875	460.96875	461.01875
466.91875	465.96875	466.01875
460.93125	460.98125	
465.93125	465.98125	
460.9375	460.9875	
465.9375	465.9875	
460.94375	460.99375	
465.94375	465.99375	

(6) Low Power Public Safety Frequencies. The frequencies listed in the Public Safety Pool Low Power Group are available nationwide on a coordinated basis, pursuant to § 90.20(c)(2) and § 90.175(b). Operation on these frequencies is limited to 5 watts output power for mobile or fixed stations. A maximum antenna height of 7 meters (20 feet) above ground is authorized for fixed stations.

## PUBLIC SAFETY POOL LOW POWER FREQUENCIES

453.03125	453.13125	453.95625	460.53125
458.03125	458.13125	458.95625	465.53125
453.0375	453.1375	453.9625	460.5375
458.0375	458.1375	458.9625	465.5375
453.04375	453.14375	453.96875	460.54375
458.04375	458.14375	458.96875	465.54375
453.05625	453.88125	453.98125	460.55625
458.05625	458.88125	458.98125	465.55625
453.0625	453.8875	453.9875	460.5625
458.0625	458.8875	458.9875	465.5625
453.06875	453.89375	453.99375	460.56875
458.06875	458.89375	458.99375	465.56875
453.08125	453.90625	460.48125	
458.08125	458.90625	465.48125	
453.0875	453.9125	460.4875	
458.0875	458.9125	465.4875	
453.09375	453.91875	460.49375	
458.09375	458.91875	465.49375	
453.10625	453.93125	460.50625	
458.10625	458.93125	465.50625	
453.1125	453.9375	460.5125	
458.1125	458.9375	465.5125	
453.11875	453.94375	460.51875	
458.11875	458.94375	465.51875	

(7) Wide area operations will not be authorized. The area of normal day-to-

day operations will be described in the application in terms of maximum

distance from a geographic center (latitude and longitude).

(8) A hospital or health care institution holding a license to operate a radio station under this part may operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

(9) Antennas of mobile stations used as fixed stations communicating with one or more associated stations located within degrees of azimuth shall be directional and have a front to back ratio of at least 15 dB.

(i) No limit shall be placed on the length or height above ground level of any commercially manufactured radiating transmission line when the transmission line is terminated in a non-radiating load and is routed at least 7 meters (20 feet) interior to the edge of any structure or is routed below ground level.

(ii) Sea-based stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure, including antenna structures.

\* \* \* \* \*

[FR Doc. 01-22439 Filed 9-11-01; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Parts 172, 174, 175, 176, and 177

[Docket No. RSPA-01-10568 (HM-207B)]

RIN 2137-AC64

### Hazardous Materials: Retention of Shipping Papers

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** RSPA is proposing to amend the Hazardous Materials Regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date the hazardous material is accepted by a carrier.

**DATES:** Comments must be received by November 13, 2001.

**ADDRESSES:** You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400

Seventh Street SW., Washington, DC 20590-0001. You should identify the docket number (RSPA-01-10568 (HM-207B)) and submit your comments in two copies. If you want to confirm that we received your comments, you should include a self-addressed, stamped postcard. You may submit comments by e-mail by accessing the Dockets Management System website at: <http://dms.dot.gov>. Click on "Electronic Submission" to obtain instructions for filing a document electronically. The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif building) at the above address. You may review public dockets there between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You may also review comments on-line at the DOT Dockets Management System web site at: <http://dms.dot.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Deborah Boothe of the Office of Hazardous Materials Standards, (202) 366-8553, Research and Special Programs Administration, U.S. Department of Transportation.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Any person who offers a hazardous material for transportation in commerce must describe the hazardous material on a shipping paper in the manner required in 49 CFR part 172, subpart C. A shipping paper includes "a shipping order, bill of lading, manifest or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203 and 172.204." 49 CFR 171.8 (definition of "shipping paper"). A hazardous waste manifest "may be used as the shipping paper" if it contains all the information required by 49 CFR part 172, subpart C. 49 CFR 172.205(h).

Since 1980, generators and transporters of hazardous waste have been required to retain a copy of the hazardous waste manifest "for three years from the date the waste was accepted by the initial carrier." 49 CFR 172.205(e)(5), adopted in RSPA's May 22, 1980 final rule, 45 FR 34560, 34698. See also regulations of the U.S. Environmental Protection Agency at 40 CFR 262.40(a), 263.22(a). In 1994, Congress amended Federal hazardous material transportation law to require that, after a hazardous material "is no longer in transportation," each offeror and carrier of a hazardous material must retain the shipping paper "or electronic image thereof for a period of 1 year to be accessible through their respective

principal places of business." 49 U.S.C. 5110(e), added by Pub. L. 103-311, Title I, § 115, 108 Stat. 1678 (Aug. 26, 1994). That section also provides that the offeror and carrier "shall, upon request, make the shipping paper available to a Federal, State, or local government agency at reasonable times and locations."

RSPA proposes to amend the HMR to conform with § 5110(e). A paper copy of the shipping paper must accompany a hazardous material during transportation. We propose to add a new § 172.201(e) and amend §§ 174.24, 175.30, 176.24, and 177.817 to require each shipper and carrier to retain a copy of the shipping paper, or an electronic image thereof, for a period of 375 days after the date a hazardous material is offered for transportation by the shipper and accepted by the carrier. For purposes of the 375-day retention requirement, an electronic image includes an image transmitted by a facsimile (FAX) machine, an image on the screen of a computer, or an image generated by an optical imaging machine.

The statute requires that each shipper and carrier of a hazardous material retain the shipping paper or electronic image thereof for a period of one year after the hazardous material is no longer in transportation. However, the shipper may not know the exact date when transportation ends, nor will an originating or intermediate carrier know when transportation ends if it does not deliver the hazardous material to the consignee. Therefore, we are proposing that the 375-day retention period begin from the date the shipment is offered and accepted by the initial carrier for transportation. This is the same date that the three-year retention period for hazardous waste manifests starts. (49 CFR 172.205(e)(5)). Well over 95 percent of hazardous materials shipments are delivered within 10 days after they are offered to a carrier. Thus, for these shipments, our proposal to begin the 375-day retention period on the date a shipment is offered and accepted by the initial carrier is consistent with the statutory requirement for retention of shipping documents for one year after transportation ends. For the small percentage of shipments that take longer than 10 days to deliver, especially those shipments involving interlining and international transportation, the shipper and initial and intermediate carriers will likely not know the delivery date for the shipment and will therefore be uncertain about the retention period if the retention period begins with the delivery date. To require shippers and carriers to determine an exact delivery

date would impose an unreasonable recordkeeping and reporting burden that was not intended by the statute.

In order to facilitate compliance with and enforcement of the requirement, we propose that the copy be dated. For shippers, the shipping paper copy must include the date that the shipment is accepted for transportation by the initial carrier. For carriers, the shipping paper copy must include the date that the carrier accepts the shipment for transportation. The shipping paper may be electronically filed; however, it must be made available on paper if requested by an authorized federal, state, or local government official.

The shipping paper copy or its electronic image must be accessible at or through the principal place of business of each person required to prepare or maintain it during transportation. (For a motor carrier, "principal place of business" has the same meaning as in § 390.5 of the Federal Motor Carrier Safety Regulations.) In this context, "accessible" means readily and easily obtained, i.e., with the same speed of availability as that required to retrieve a paper record from a filing cabinet holding records of the business.

Except for hazardous waste manifests, see 49 CFR 172.205(a), the HMR do not require a shipping paper to be in any specific form or format. We understand that different types of documents are used by offerors of hazardous material to meet the requirement to describe the hazardous material on a "shipping paper." Some private motor carriers use the same shipping paper for multiple shipments of a hazardous material. Typically, these permanent shipping papers are used by private motor carriers who transport a single hazardous material on a regular basis over an extended period, such as one cargo tank of gasoline. We are proposing to permit operators to retain a single copy of such permanent shipping papers for the period in which the shipping paper is used and 375 days thereafter to meet the shipping paper retention requirements in this NPRM provided that the operator also retains a record of each shipment made under the shipping paper. The record must include shipping name, identification number, quantity transported, and date of shipment.

### III. Regulatory Analyses and Notices

#### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of

Management and Budget. This proposed rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034).

This proposed rule implements a statutory requirement that has been in effect since 1994. We do not anticipate any additional costs on offerors and carriers of hazardous materials, and, therefore, preparation of a regulatory evaluation is not warranted. This determination may be revised based on comments received.

#### B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Federal hazardous material transportation law would preempt any State, local, or Indian tribe requirement on the preparation, execution, and use of shipping documents related to hazardous materials that is not substantively the same as this proposed rule, 49 U.S.C. 5125(b)(1)(B), but this proposed rule would not have substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal hazardous materials transportation law provides that, if DOT issues a regulation on the preparation, execution, and use of shipping documents related to hazardous material, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. 49 U.S.C. 5125(b)(2). The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of federal preemption be 90 days from publication of a final rule in the **Federal Register**.

#### C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to assess the impact of its regulations on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule implements a statutory requirement that has been in effect since 1994. Therefore, this proposed rule will not impose additional costs on offerors and carriers of hazardous material. I hereby certify that, while the proposed rule would apply to a substantial number of small entities, there would not be a significant economic impact on those small businesses.

#### E. Unfunded Mandates Reform Act of 1995

This NPRM imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

#### F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. No new burdens are proposed under this rule. RSPA has a current information collection approval under OMB No. 2137-0034, "Shipping Papers and Emergency Response Information" which includes the shipping paper retention requirement in the burden estimates.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Environmental Assessment

This proposed rule does not affect packaging or hazard communication requirements for shipments of hazardous materials transported in commerce. We find that there are no significant environmental impacts associated with this proposed rule.

#### List of Subjects

##### 49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

**49 CFR Part 174**

Hazardous materials transportation, Radioactive materials, Railroad safety.

**49 CFR Part 175**

Air Carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

**49 CFR Part 176**

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

**49 CFR Part 177**

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR parts 172, 174, 175, 176, and 177 as follows:

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS**

1. The authority citation for part 172 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

2. In § 172.201, the section heading would be revised and a new paragraph (e) would be added to read as follows:

**§ 172.201 Preparation and retention of shipping papers.**

\* \* \* \* \*

(e) Each person required to describe a hazardous material on a shipping paper must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier. A private motor carrier (as defined in § 390.5 of subchapter B of this title) that uses a shipping paper without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and

identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

**PART 174—CARRIAGE BY RAIL**

3. The authority citation for part 174 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

4. Section 174.24 would be revised to read as follows:

**§ 174.24 Shipping papers.**

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by rail unless that person receives a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter. Only an initial carrier within the United States must receive and retain a copy of the shipper's certification as required by § 172.204 of this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the initial carrier. Each shipping paper copy must include the date of acceptance by the initial carrier.

**PART 175—CARRIAGE BY AIRCRAFT**

5. The authority citation for part 175 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

6. In § 175.30, paragraph (a)(2) would be revised to read as follows:

**§ 175.30 Accepting and inspecting shipments.**

(a) \* \* \*

(1) \* \* \*

(2) Described and certified on a shipping paper prepared in duplicate in accordance with part 172 of this subchapter or as authorized by § 171.11

of this subchapter. Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a federal, state, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

**PART 176—CARRIAGE BY VESSEL**

7. The authority citation for part 176 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

8. Section 176.24 would be revised to read as follows:

**§ 176.24 Shipping papers.**

(a) A person may not accept a hazardous material for transportation or transport a hazardous material by vessel unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter.

(b) Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, each shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, each shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier.

**PART 177—CARRIAGE BY PUBLIC HIGHWAY**

9. The authority citation for part 177 would continue to read as follows:

**Authority:** 49 U.S.C. 5101–5127; 49 CFR 1.53.

10. In § 177.817, paragraph (a) would be revised and new paragraph (f) would be added, to read as follows:

**§ 177.817 Shipping papers.**

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter, unless the material is excepted from shipping paper requirements as provided in § 172.200(b) of this subchapter.

\* \* \* \* \*

(f) *Retention of shipping papers.* Each person receiving a shipping paper required by this section must retain a copy of the shipping paper, or an

electronic image thereof, that is accessible at or through its principal place of business and must make the shipping paper immediately available, upon request, to an authorized official of a Federal, State, or local government agency at reasonable times and locations. For a hazardous waste, the shipping paper copy must be retained for three years after the material is accepted by the initial carrier. For all other hazardous materials, the shipping paper copy must be retained for 375 days after the material is accepted by the carrier. Each shipping paper copy must include the date of acceptance by the carrier. A private motor carrier (as defined in § 390.5 of subchapter B of this title) that uses a shipping paper

without change for multiple shipments of a single hazardous material (i.e., one having the same shipping name and identification number) may retain a single copy of the shipping paper, instead of a copy for each shipment made, if the carrier also retains a record of each shipment made, to include shipping name, identification number, quantity transported, and date of shipment.

Issued in Washington, DC on September 6, 2001, under authority delegated in 49 CFR part 106.

**Robert A. McGuire,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 01-22851 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-60-P**

# Notices

Federal Register

Vol. 66, No. 177

Wednesday, September 12, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

RIN 0560-AG48

#### Sugar Payment-In-Kind (PIK) Diversion Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of program Implementation.

**SUMMARY:** This notice implements section 1009(e) of the Food Security Act of 1985 with respect to existing Commodity Credit Corporation (CCC) inventories of sugar. Based on the combination of relatively low market prices, CCC holding sugar inventory with no other specific disposal plan, and U.S. sugar producers' growing realization of the major market problems facing the sugar sector, CCC is implementing a Sugar Payment-In-Kind (PIK) Diversion Program to help reduce CCC's sugar inventory and related storage costs.

**EFFECTIVE DATE:** September 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Bickerton, Economist, Dairy and Sweetener Analysis, Farm Service Agency, USDA, STOP 516, 1400 Independence Avenue, SW., Washington, DC 20250-0516.

#### SUPPLEMENTARY INFORMATION:

#### Authority for a Sugar PIK Diversion Program

Authority for CCC to conduct a Sugar PIK Diversion Program is based on section 1009(e) of the Food Security Act of 1985, which provides that when a loan program is in effect, the Secretary may, at any time before harvest, accept bids from producers to convert planted acreage to diverted acreage in return for payment in kind from CCC surplus stocks of the commodity to which the acreage was planted. Subsection (e) also states that no producer may receive over

\$20,000 worth of in-kind payments. Such action can be taken only if: (1) Changes in domestic or world supply or demand conditions occurred after the announcement of the loan program for the crop and (2) without action to further adjust production, the Government and producers will be faced with a burdensome and costly surplus. Overall, the measures addressed in section 1009(e) and other subsections can be taken under the terms of the statute only if they would reduce direct and indirect costs to the Government without adversely affecting the income of participating small- and medium-size producers.

#### Basis for Implementing a Sugar PIK Diversion Program

CCC is implementing a Sugar PIK Diversion Program to reduce the cost of the sugar loan program by eliminating up to 200,000 tons of CCC's sugar inventory and related Government storage costs.

#### Program Design

##### Administration

This program will be administered by the Executive Vice President, CCC as follows.

##### 1. Bid Submission Procedures

(a) Producers wishing to participate in the program must submit a bid to their local Farm Service Agency Service Center during the period between September 10 and 21, 2001. The bid must be on form CCC-744. The contract will provide for the diversion of acreage planted to sugar beets or sugar cane which are under contract for delivery to a sugar processor. Diverted acreage may not be harvested for sugar or used for any other commercial purposes. In return, producers will receive in-kind payments of sugar from CCC's inventory.

(b) The bid must provide information necessary for conducting the program, including but not limited to, the number of acres that the producer will divert; the producer's 1997-1999 simple average sugar beet or sugar cane yield, the 1997-1999 simple average sugar content of the producer's beets or cane, the processor's 1997-1999 simple average recovery rate, and the value of CCC sugar sought as payment.

(c) Notification of acceptable bids, unless otherwise determined by CCC,

will be published on or about September 28, 2001.

##### 2. In-Kind Payments

(a) CCC will, through such methods as CCC deems appropriate, make in-kind payments in the form of sugar held in CCC inventory.

(b) Subject to CCC approval, producers will have the option of receiving either refined beet sugar or raw cane sugar.

(c) The value of CCC-owned inventory is dependent upon the storage location of the sugar and the type of sugar (raw or refined). Accordingly, the quantity of sugar to be paid by CCC as an in-kind payment to a producer will be determined by dividing: (1) The total of the bid amount submitted by the producer and accepted by CCC, by (2) the value per unit of CCC's inventory at the storage location where title will transfer from CCC to the producer, or the producer's assignee.

(d) Producers may assign their in-kind payments only to the processor with whom the producer has a 2001-crop sugar contract.

(e) CCC will transfer title of the sugar to the producer, or the producer's assignee, no earlier than October 1, 2001, and no later than March 31, 2002, as determined by CCC, by notifying the producer or assignee that the sugar is available to them. CCC will stop storage payments on this sugar on the date of transfer.

##### 3. Payment Limitation

(a) A \$20,000 payment limitation applies separately to each "producer," defined as an individual, and each individual member of a joint operation or joint venture. However, minors are combined with their guardian or parent for payment limitation purposes.

(b) This payment limitation is separate and distinct from all other CCC program payment limitations. In the case of current verbal contracts with processors, proof of payment as multiple persons may be required for multiple program eligibilities. Also, husbands and wives may be required to be separate signatories to written contracts in order to be separately eligible for payments.

##### 4. Planting Limitation to the 2001 Crop

(a) Participation in the 2001 PIK Program is open to all producers,

regardless of whether or not they participated in the 2000 PIK Program.

(b) Participants in the 2001 PIK Program will be ineligible to participate in any future sugar PIK diversion program if they plant or have an interest in, directly or indirectly, more total acres to sugar beets or sugar cane in future years than in 2001.

#### 5. Bid Rankings

CCC will rank eligible bids on the basis of the bid amount as a percentage of the bid cap, which is CCC's estimate of the value of the diverted sugar production. Eligible bids with the lowest of such percentages will be selected first. In the case of bids with identical ranking, selection will be based on random selection or pro rata shares, as CCC deems appropriate.

Signed in Washington, D.C., on September 7, 2001.

**James R. Little,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 01-22940 Filed 9-7-01; 4:28 pm]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Transfer of Administrative

#### **Jurisdiction: Fort Leonard Wood Military Reservation Interchange, Mark Twain National Forest, MO**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of land interchange.

**SUMMARY:** On June 18, 2001, and June 29, 2001, respectively, the Secretary of the Army and the Secretary of Agriculture signed a joint interchange order authorizing the transfer of administrative jurisdiction from the Department of Agriculture to the Department of the Army for 9,990 acres, more or less (Exhibit B), lying within the Fort Leonard Wood Military Reservation and the Mark Twain National Forest, Pulaski County, Missouri. Furthermore, the order transfers from the Department of the Army to the Department of Agriculture for inclusion in the Mark Twain National Forest 1,819 acres, more or less (Exhibit A), within the boundaries of the Mark Twain National Forest, Pulaski and Laclede Counties, Missouri. At this time, however, only 1,769 acres, more or less, are being transferred to the Department of Agriculture, Forest Service, and 50 acres are being retained under the jurisdiction of the Army. These 50 acres (Exhibit C) have been identified as possibly containing

ordnance, explosives, or other hazardous materials and will not be transferred until necessary response actions have been completed as acceptable to the Department of Agriculture, Forest Service. Upon completion of the environmental response activities, as agreed by the Army and the Forest Service, the Forest Service will publish a notice in the **Federal Register** that the lands described in Exhibit C are deemed transferred to the jurisdiction of the Secretary of Agriculture as provided in the joint interchange order. Copies of the joint order, as signed, and Exhibits A, B and C, which describe the lands therein being conveyed and those lands excluded from jurisdictional change to the Forest Service until completion of investigation and remediation by the Army, are set out at the end of this notice.

**DATES:** The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b) has been met. The order is effective September 12, 2001.

**ADDRESSES:** Copies of the maps showing the lands included in this joint interchange are on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor—South, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the maps are encouraged to call ahead to (202) 205-1248 to facilitate entry into the building.

#### **FOR FURTHER INFORMATION CONTACT:**

David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, Telephone: (202) 205-1362.

Dated: September 5, 2001.

**James R. Furnish,**

*Deputy Chief for National Forest System.*

### Department of the Army

### Department of Agriculture

*Fort Leonard Wood, Missouri—Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest System Lands*

By virtue of the authority vested in the Secretary of the Army and the Secretary of Agriculture by the Act of July 26, 1956, (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

1. The lands under the jurisdiction of the Department of the Army described in Exhibit A and shown on a map on file and available for public inspection in the Office of the Chief, U.S. Department

of Agriculture (USDA), Forest Service, Washington, DC, which lie within the boundary of Fort Leonard Wood Military Reservation, Missouri, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of record.

2. The lands under the jurisdiction of the USDA Forest Service described in Exhibit B and shown on a map on file and available for public inspection in the office of the Chief, USDA Forest Service, Washington, DC, which lie within the Mark Twain National Forest, Missouri, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests of record.

3. All lands described in Exhibit C that have been identified as possibly containing ordnance, explosives, or other hazardous materials will be retained under Army jurisdiction until necessary response actions are completed as acceptable to the USDA Forest Service. Upon completion of the environmental response activities, as agreed upon by the Army and the Forest Service pursuant to a Memorandum of Understanding dated May 23, 2001 and June 6, 2001, the Forest Service shall publish a notice in the **Federal Register** that the lands described in Exhibit C are deemed transferred to the jurisdiction of the Secretary of Agriculture as provided in this Joint Interchange Order.

4. Subject to the condition in Paragraph 3 and pursuant to section 2 of the aforementioned Act of July 26, 1956, the National Forest System lands transferred to the Secretary of Army by this Joint Interchange Order, are hereby subject only to the laws applicable to the Department of the Army lands comprising Fort Leonard Wood Military Reservation, Missouri. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereafter subject only to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended. Subject to the condition in Paragraph 3, the boundary of Fort Leonard Wood Military Reservation is hereby adjusted to exclude all of the lands transferred to the Secretary of Agriculture and include all lands received by the Secretary of Army, subject to outstanding rights or interests of record. Also subject to paragraph 3, pursuant to section 11 of the Weeks Act (16 U.S.C. 521), the boundary of the Mark Twain National Forest is hereby modified to include those lands transferred from the Secretary of the Army to the Secretary of Agriculture.

5. Any environmental liability created by the Department of the Army's use of the lands described in Exhibits A, and B, and C shall be the Army's sole responsibility as provided for in the Memorandum of Understanding entered into by the Department of the Army and the USDA Forest Service and signed by each on May 23, 2001 and June 6, 2001, respectively. After the effective date of this Joint Interchange Order, the Department of the Army shall remain responsible for the response to any ordnance, explosives, hazardous substances, or pollutants or contaminants discovered on all lands described in Exhibits A and B that are the result of past Army operations on those lands or that occurred during the Army's administration of those lands.

This Joint Interchange Order will be effective as of the date of publication in the **Federal Register**.

Dated: June 18, 2001.

Thomas E. White,  
Secretary of the Army.

Dated: June 29, 2001.

Ann M. Veneman,  
Secretary of Agriculture.

#### **Exhibit A—Department of Army Lands To Be Transferred to Mark Twain National Forest**

##### **Township 35 North, Range 10 West, 5th Principal Meridian:**

Section 21: West ½ lying east of the Big Piney River and west of State Highway "J".

Containing 182.38 acres, more or less.

Section 28: North ½ lying east of the Big Piney River and west of State Highway "J".

Containing 164.40 acres, more or less.

##### **Township 34 North, Range 12 West, 5th Principal Meridian:**

Section 3: Southeast ¼ of the Southeast ¼ except approximately 8 acres north and west of the road crossing the northwest corner of the SESE.

Containing 32.00 acres, more or less.

Section 10: East ½ of the East ½

Containing 160.00 acres, more or less.

Section 16: East ½

Containing 320.00 acres, more or less.

Section 21: East ½

Containing 320.00 acres, more or less.

Section 28: East ½

Containing 320.00 acres, more or less.

Section 33: East ½

Containing 320.00 acres, more or less.

Containing in the aggregate 1818.78 acres, more or less.

#### **Exhibit B—Forest Service Lands To Be Transferred to Fort Leonard Wood**

##### **Township 35 North, Range 11 West, 5th Principal Meridian:**

Section 1: West ½ of the West ½ lying west of Decker Ridge Road.

Containing an estimated 73.17 acres, more or less.

Section 12: West ½ of the Northwest ¼ lying west of Decker Ridge Road.

Containing an estimated 43.04 acres, more or less.

Also the West ½ of the Southeast ¼, and the Southeast ¼ of the Southeast ¼.

Containing 125.31 acres, more or less.

Section 6: Entire section.

Containing 655.69 acres, more or less.

Section 7: Entire section.

Containing 646.00 acres, more or less.

Section 18: Entire section.

Containing 644.20 acres, more or less.

Section 19: Entire section.

Containing 648.94 acres, more or less.

Section 30: Entire section.

Containing 647.30 acres, more or less.

##### **Township 36 North, Range 12 West, 5th Principal Meridian:**

Section 36: That part of the South Half of the Southeast Quarter described as follows: Commencing at the Township Corner to Townships 35 and 36 North, Ranges 11 and 12 West, thence North 79° West 1.9 chains to the true point of beginning; Thence North 79° West 38.82 chains to the intersection with the North-South centerline of Section 36, Township 36 North, Range 12 West; Thence South along said line 7.03 chains to the South Quarter Corner of Section 36; Thence South 88°58' East along the Township Line 38.00 chains; Thence North 15°30' East 0.36 chains to the point of beginning.

Containing 14.00 acres, more or less.

##### **Township 35 North, Range 12 West, 5th Principal Meridian:**

Section 1: Entire section except 0.73 acres in the southwest quarter described as follows: Commencing at the southwest corner of the southwest quarter of said Section 1; Thence along the west boundary of said southwest quarter N 01°09'E, 627.2 Feet to the Point of Beginning;

Thence S 88°45'E, 174.8 Feet;

Thence N 01°15'E, 190.0 Feet;

Thence N 88°45'W, 126.4 Feet;

Thence S 39°18'W, 78.9 Feet to west boundary;

Thence S 01°09'W 127.9, Feet along said boundary to the Point of Beginning.

Containing 647.34 acres, more or less.

Section 12: Entire section except 1 acre cemetery in the Northwest ¼ of the Southwest ¼.

Containing 639.00 acres, more or less.

Section 13: East ½ east of Roubidoux Creek

Containing 246.77 acres, more or less.

Section 24: East ½, and the East ½ of the Southwest ¼.

Containing 400.00 acres, more or less.

Section 25: Entire section.

Containing 640.00 acres, more or less.

Section 26: East ½ of the East ½.

Containing 160.00 acres, more or less.

Section 35: East ½, the East ½ of the Southwest ¼, the Southwest ¼ of the Southwest ¼, and the Southeast ¼ of the Northwest ¼.

Containing 480.00 acres, more or less.

Section 36: North ½, the Southwest ¼, and the West ½ of the Southeast ¼.

Containing 554.62 acres, more or less.

##### **Township 34 North, Range 42 West, 5th Principal Meridian:**

Section 1: All of Lots 1 through 6 and the West ½ of Lot 7 of the Northeast ¼, and all of Lots 1 through 7 of the Northwest ¼.

Containing 1,046.54 acres, more or less.

Section 2: All of Lots 1 through 7 of the Northeast ¼, and all of Lots 1 through 7 of the Northwest ¼.

Containing 1,108.01 acres, more or less.

Section 3: All of the Northeast ¼ lying east of Roubidoux Creek (including all of the East ½ of Lots 6 and 7).

Containing an estimated 570.00 acres, more or less.

Containing in the aggregate 9,989.93 acres, more or less.

#### **Exhibit C—Department of Army Lands To Be Excluded From Jurisdictional Change to the Forest Service Until Completion of Investigation and Remediation by the Army**

##### **Township 34 North, Range 12 West, 5th Principal Meridian:**

Section 33: a portion of the East ½ of the East ½ of the Northeast ¼

Section 28: a portion of the East ½ of the East ½ of the Southeast ¼

Specifically located within the following longitude and latitude coordinates:

Northwest corner, North 37°37.299, West 92°15.123

Northeast corner North 37°37.301, West 92°14.975

Southwest corner North 37°36.810, West 92°15.123

Southeast corner North 37°36.809, West 92°14.975

Containing 50 acres more or less.

[FR Doc. 01-22846 Filed 9-11-01; 8:45 am]

BILLING CODE 3410-11-P

## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

#### **Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee**

**AGENCY:** Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** The Deschutes PIEC Advisory Committee will meet on September 20-21. The first day will be a field trip starting at 9 a.m. at the Prineville BLM Office for a tour of water quality-related issues in the basin. The second day will be a business meeting starting at 9 a.m. at the Satafford Inn at 1773 NE 3rd St. in Prineville, Oregon. Agenda items will include: Water Quality Restoration Plans in the Deschutes Basin, a Wrap up of PAC Goals, Info Sharing and a Public Forum from 3:30 p.m. till 4 p.m. All Deschutes Province Advisory

Committee Meetings are open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE 3rd, Bend, OR 97701, Phone (541) 416-6872.

Dated: September 4, 2001.

**Leslie A.C. Weldon,**

*Deschutes National Forest Supervisor.*

[FR Doc. 01-22853 Filed 9-11-01; 8:45 am]

**BILLING CODE 3410-11-M**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-501]

#### **Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China; Notice of Rescission in Part of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission in part of the antidumping duty administrative review for the period February 1, 2000–January 31, 2001.

**SUMMARY:** In accordance with 19 CFR 351.213(b)(2), the Department received a timely request from petitioner, Paint Applicator Division of the American Brush Manufacturers Association (Paint Applicator Division), that we conduct an administrative review of the sales of Hebei Founder Import & Export Company (Founder) and Hunan Provincial Native Products Import & Export Corp. (Hunan). On March 22, 2001, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes and paint brush heads for the period of review (POR) of February 1, 2000 through January 31, 2001. We are now rescinding this review with respect to Founder because Founder did not have any sales, shipments or entries during the POR.

**EFFECTIVE DATE:** September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline Arrowsmith or Sally C. Gannon, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202-482-4052 and 202-482-0162, respectively.

**SUPPLEMENTARY INFORMATION:**

### **Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

### **Background**

On February 14, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on natural bristle brushes and brush heads from the People's Republic of China (PRC) (66 FR 10269). On February 28, 2001, the Department received a timely request from the Paint Applicator Division for administrative reviews of Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation (Hunan) and Hebei Founder Import and Export Company (Founder). On March 22, 2001, the Department initiated an administrative review of the antidumping duty order on natural bristle paintbrushes and paintbrush heads, for the period from February 1, 2000 through January 31, 2001, in order to determine whether merchandise imported into the United States is being sold at less than fair value prices. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part* (66 FR 16037). We received a letter from Founder, on April 9, 2001, stating that it did not make any sales or shipments during the POR. On April 24, 2001, we received a letter from Hunan stating that no entries of subject merchandise exported by Hunan were made during the POR. On May 8, 2001, we issued the questionnaire to Founder and Hunan.

The Department performed a U.S. Customs Service (Customs) query for entries of natural bristle paintbrushes and brush heads, classified under the Harmonized Tariff Schedule of the United States (HTSUS) number 9603.40.40.40, from the PRC during the POR. We found no entries or shipments from Founder during the POR. However, we did find evidence of a potential entry from Hunan. In its June 22, 2001 response to our section A questionnaire, Hunan stated that it had one sample sale during the POR.

### **Rescission, in Part, of Antidumping Administrative Review**

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an

administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of subject merchandise. On July 26, 2001, the Department issued a memorandum stating our intent to rescind the review, in part, with regard to Founder in light of the information on the record that Founder did not sell, ship or enter the subject merchandise during the POR. The Department circulated this memorandum among the parties and received no comments. *See Memorandum For the File From Jacqueline Arrowsmith Through Barbara E. Tillman: Partial Rescission of Antidumping Duty Administrative Review* (July 26, 2001) (on file in the Department's Central Records Unit in Room B-099). Therefore, the Department has determined that it is reasonable to rescind, in part, the administrative review of the antidumping duty order on natural bristle paintbrushes and paintbrush heads with respect to Founder for the period February 1, 2000 through January 31, 2001. The Department will issue appropriate assessment instructions to Customs.

The Department is not rescinding its review of the antidumping duty order on natural bristle paintbrushes and paintbrush heads with respect to Hunan, for the period February 1, 2000 through January 31, 2001, because there is evidence on the record of a sale, made by Hunan to the United States market during the POR.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(3) and sections 751(a) and 777(i)(1) of the Act.

Dated: September 6, 2001.

**Edward C. Yang,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 01-22933 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-823-810]

**Antidumping Duty Order: Solid Agricultural Grade Ammonium Nitrate From Ukraine**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of antidumping duty order.

**EFFECTIVE DATE:** September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jarrod Goldfeder, Melani Miller, or Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0189, (202) 482-0116, or (202) 482-3853, respectively.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to the regulations at 19 CFR part 351 (April 2000).

**Scope of Order**

The products covered by this antidumping duty order are solid, fertilizer grade ammonium nitrate ("ammonium nitrate" or "subject merchandise") products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 3102.30.00.00. Although the HTSUS subheadings are provided for convenience and for purposes of the Customs Service, the written description of the merchandise under investigation is dispositive.

**Antidumping Duty Order**

On July 25, 2001, the Department published in the **Federal Register** the

*Notice of Final Determination of Sales At Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate From Ukraine*, 66 FR 38632 (July 25, 2001) ("Final Determination").

On August 31, 2001, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that a U.S. industry is "materially injured," within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of less-than-fair-value imports of ammonium nitrate from Ukraine.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct the Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all entries of ammonium nitrate from Ukraine.

Antidumping duties will be assessed on all unliquidated entries of ammonium nitrate from Ukraine entered, or withdrawn from warehouse, for consumption on or after March 5, 2001, the date of publication of the Department's preliminary determination in the **Federal Register**. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Solid Agricultural Grade Ammonium Nitrate From Ukraine*, 66 FR 13286 (March 5, 2001).

The ITC further found that critical circumstances do not exist with respect to imports of the subject merchandise from Ukraine. As a result, the Department will direct Customs officers to refund any cash deposits made, or bonds posted, pursuant to the Department's affirmative determination of critical circumstances for all merchandise produced/exported by all Ukrainian companies which were entered on or after December 5, 2000 (which is 90 days prior to the Department's preliminary determination publication date of March 5, 2001) and before March 5, 2001.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below. The "Ukraine-wide Rate" applies to all exporters of ammonium nitrate not specifically listed below:

Exporter/manufacture	Weighted-average margin percentage
J.S.C. "Concern" Strol .....	156.29
Ukraine-wide Rate .....	156.29

This notice constitutes the antidumping duty order with respect to ammonium nitrate from Ukraine, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: September 6, 2001.

**Richard W. Moreland,**  
Acting Assistant Secretary for Import Administration.

[FR Doc. 01-22934 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****National Institute of Standards and Technology****Judges Panel of the Malcolm Baldrige National Quality Award**

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Thursday, September 20, 2001. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, begin stage III of the judging process, review feedback to first stage applicants, a debriefing on the State and Local Workshop, an E-Baldrige demonstration, and 2001 Regionals Sign-Up. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

**DATES:** The meeting will convene September 20, 2001 at 9 a.m. and adjourn at 4:30 p.m. on September 20, 2001. The entire meeting will be closed.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and

Technology, Red Training Room, Chemistry Building, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 12, 2001, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: September 4, 2001.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 01-22857 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-13-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 090501A]

#### Endangered and Threatened Species; Take of Anadromous Fish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability and request for comment.

**SUMMARY:** Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Lower Columbia River (LCR) chum salmon under the Endangered Species Act (ESA). The FMEP specifies the future management of inland fisheries potentially affecting the LCR chum salmon in the State of Oregon. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

**DATES:** Written comments on the draft FMEP must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on October 12, 2001.

**ADDRESSES:** Written comments and requests for copies of the draft FMEP should be addressed to Richard Turner, Sustainable Fisheries Division, Hatchery and Inland Fisheries Branch, 525 N.E. Oregon Street, Suite 510, Portland, OR 97232 or faxed to 503-872-2737. The documents are also available on the Internet at <http://www.nwr.noaa.gov/>. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Richard Turner, Portland, OR at phone number 503-736-4737 or e-mail: [rich.turner@noaa.gov](mailto:rich.turner@noaa.gov).

**SUPPLEMENTARY INFORMATION:** This notice is relevant to the Lower Columbia River chum salmon (*Oncorhynchus keta*) Evolutionarily Significant Unit (ESU).

#### Background

ODFW has submitted to NMFS an FMEP for inland recreational and commercial fisheries potentially affecting listed adults and juveniles of the LCR chum salmon ESU. These include all freshwater fisheries managed under the sole jurisdiction of the State of Oregon occurring within the boundaries of the LCR chum salmon ESU including the anadromous portions of the Lower Columbia River mainstem and tributaries, from the mouth upstream to Bonneville Dam. The objective of the fisheries is to harvest hatchery-origin salmon and steelhead, and other fish species in a manner that does not jeopardize the survival and recovery of the listed LCR chum salmon ESU. All Oregon tributaries to the Columbia River are closed to the retention of chum salmon but chum salmon may be handled during fisheries for steelhead, salmon and other species in these tributaries. Impact levels to the listed LCR chum salmon ESU are specified in the FMEP. Population risk assessments in the FMEP indicate the extinction risk for the listed ESU under the proposed fishery impact levels to be low. A variety of monitoring and evaluation tasks are specified in the FMEP to assess the abundance of LCR chum salmon, determine fishery effort, and angler compliance. ODFW will annually conduct a population status and a review of the fisheries within the provisions of the FMEP. ODFW will conduct, at a minimum of every 5 years, a comprehensive review to evaluate the effectiveness of the FMEP.

As specified in the July 10, 2000, ESA 4 (d) rule for salmon and steelhead (65 FR 42422), NMFS may approve an FMEP if it meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

#### Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4 (d) rule (65 FR 42422, July 10, 2000) specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule do not apply to activities associated with fishery harvest provided that an FMEP has been approved by NMFS to be in accordance with the salmon and steelhead 4 (d) rule.

Dated: September 6, 2001.

**Phil Williams,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01-22932 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. No. 082301A]

#### Endangered and Threatened Wildlife and Plants; Recovery Plan Preparation for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for information.

**SUMMARY:** The National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) (the Services) are developing a recovery plan for the Gulf of Maine Distinct Population Segment of Atlantic Salmon. The Services are required by the Endangered Species Act (ESA) to develop plans for the conservation and survival of federally listed species, i.e., recovery plans.

**FOR FURTHER INFORMATION CONTACT:** Mark Minton, NMFS, telephone 978-

281–9355; Anne Hecht, FWS 978–443–4325.

**SUPPLEMENTARY INFORMATION:** The ESA specifies that recovery plans must include: (1) a description of management actions necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of the time and costs required to achieve the plan's goal and achieve intermediate steps toward that goal.

The Services have developed an interim, draft schedule for the completion of the recovery plan. The interim schedule for plan development includes completion of technical draft recovery plan (December 2001); completion and distribution of draft recovery plan (May 2002); completion of final recovery plan (May 2003).

The NMFS hereby requests relevant information on the species and/or comments on the impacts to the species that should be addressed during plan development. Comments must be received within 60 days of the publication of this notice. Comments should be sent to:

National Marine Fisheries Service,  
One Blackburn Drive, Gloucester, MA  
01930, Attn: Atlantic Salmon Recovery  
Plan Coordinator.

Dated: September 5, 2001.

**Ann D. Terbush,**

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 01–22930 Filed 9–11–01; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082001B]

#### Small Takes of Marine Mammals Incidental to Specified Activities; Repairs at the Carpinteria Oil and Gas Processing Facility, Carpinteria, CA

**AGENCY:** National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.

**ACTION:** Notice of receipt of application  
and proposed authorization for a small  
take exemption; request for comments.

**SUMMARY:** NMFS has received a request  
from Venoco, Inc. for an authorization  
to take small numbers of marine  
mammals by harassment incidental to  
repairs at the Carpinteria Oil and Gas  
Processing Facility in Carpinteria, CA.

Under the Marine Mammal Protection  
Act (MMPA), NMFS is requesting  
comments on its proposal to authorize  
Venoco to incidentally take, by  
harassment, small numbers of Pacific  
harbor seals (*Phoca vitulina richardsi*)  
from November 1, 2001, through  
November 1, 2002.

**DATES:** Comments and information must  
be received no later than October 12,  
2001.

**ADDRESSES:** Comments on the  
application should be addressed to  
Donna Wieting, Chief, Marine Mammal  
Conservation Division, Office of  
Protected Resources, NMFS, 1315 East-  
West Highway, Silver Spring, MD  
20910-3225. A copy of the application,  
the Project Execution Plan, and Wildlife  
Protection Plan may be obtained by  
writing to this address or by telephoning  
one of the contacts listed here.

**FOR FURTHER INFORMATION CONTACT:**  
Simona P. Roberts, (301) 713–2322, ext.  
106 or Christina Fahy, (562) 980–4023.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Sections 101 (a)(5)(D) of the MMPA  
(16 U.S.C. 1361 *et seq.*) direct the  
Secretary of Commerce to allow, upon  
request, the incidental, but not  
intentional taking of small numbers of  
marine mammals by U.S. citizens who  
engage in a specified activity (other than  
commercial fishing) within a specified  
geographical region if certain findings  
are made, the taking is limited to  
harassment, and notice of a proposed  
authorization is provided to the public  
for review.

Authorization may be granted if  
NMFS finds, based on the best available  
scientific evidence, that the taking will  
have a negligible impact on the marine  
mammal species or stock(s). Where  
negligible impact is defined in  
regulation (50 CFR 216.103) as: “an  
impact resulting from the specified  
activity that cannot be reasonably  
expected to, and is not reasonably likely  
to, adversely affect the species or stock  
through effects on annual rates of  
recruitment or survival”.

##### **Summary of Request**

On June 17, 2001, NMFS received an  
application from Venoco, Inc., the  
owner and operator of the Carpinteria  
Oil and Gas Processing Facility in  
Carpinteria, CA, requesting an  
authorization for the harassment of  
small numbers of Pacific harbor seals  
incidental to repair of gas pipeline  
supports and pier pilings at Casitas Pier.  
A detailed description of the work  
proposed for 2001 is contained in the  
Project Execution Plan and application

which is available upon request (see  
**ADDRESSES**).

Venoco plans to complete all repair  
activities in a 3–week period beginning  
in early November 2001. To account for  
potential weather and logistical delays  
and reduce further paperwork, the  
proposed IHA would be issued for a full  
1–year period (November 2001–  
November 2002).

#### **Description of Marine Mammals and Habitat Potentially Affected by the Activity**

Harbor seals generally are non-  
migratory, with local movements  
associated with such factors as tides,  
weather, season, food availability, and  
reproduction (Scheffer and Slipp, 1944;  
Fisher, 1952; Bigg, 1969, 1981). They  
haul out on rocks, reefs, beaches, and  
drifting glacial ice, and feed in marine,  
estuarine, and occasionally fresh waters.  
Harbor seals have also displayed strong  
fidelity for haulout sites (Pitcher and  
Calkins, 1979; Pitcher and McAllister,  
1981). The eastern Pacific harbor seal  
has an estimated population of 285,000  
individuals distributed along the entire  
west coast of North America from the  
Pribilof and Aleutian Islands in Alaska  
to Baja California.

In Carpinteria, Pacific harbor seals  
haul out year round. This area is one of  
two along the mainland coast of  
southern California that is readily  
accessible to the public. The other haul  
out is in La Jolla, CA. There are four  
other sizable haul outs along the  
mainland coast of Santa Barbara County,  
one at Naples, one at Point Conception,  
and two at Vandenberg Air Force Base.  
However, unlike the Carpinteria haul  
out, these sites are on private land and  
not readily accessible to the public.

In Carpinteria, peak numbers are  
reached during the pupping season (late  
February through March) and molting  
season (summer months). The pups  
born at these sites are weaned in 4 to 6  
weeks, so nearly all pups are  
independent by the end of May. 20 to  
30 pups are usually born there each year  
(Howorth, 1995, 1998). A peak  
abundance count made during the 1998  
pupping season was 345 seals (Howorth,  
1998).

The project site is adjacent to a small  
beach used by harbor seals as a haul-out  
and rookery area. Harbor seals continue  
to use this area despite pier activity and  
human presence (Howorth, 1995, 1998).  
265 feet (ft) (81 meters (m)) east of  
Casitas Pier, a small sandy beach and  
offshore rock area marks the western  
limits of the local harbor seal haul outs.

California sea lions (*Zalophus  
californianus*) do occasionally haul out  
on the beach or rocks adjacent to the

project site. However, such individuals are usually not healthy and are taken to the Santa Barbara Marine Mammal Center (Howorth, 1995, 1998).

Bottlenose dolphins (*Tursiops truncatus*) and the eastern North Pacific gray whale (*Eschrichtius robustus*) have been reported near the project site (Howorth, 1995, 1998). Both species, when sighted near the project site, have consistently avoided the pier. Years of data from previous projects and from the Carpinteria Seal Watch have not observed any instances of cetaceans within the project area.

#### **Potential Effects on Marine Mammals and their Habitat**

Potential harassment may result from noise generated by repair activities to the pipeline and pier as well as from the physical presence of people on the beaches.

Seals may be disturbed and leave the beach when pile driving activities are underway; however, previous monitoring has shown that all seals returned when activities ceased (Venoco, 2001).

#### **Number of Marine Mammals Potentially Harassed**

During repair work carried out by Venoco an estimated 364 Pacific harbor seals have the potential to be incidentally harassed. This number is the maximum count documented by Howorth (1995, 1998) during the summer molting season.

#### **Mitigation**

Mitigation measures described in this section and still under development by Venoco are being proposed to reduce the potential for harassment and eliminate the potential for incidental injury and mortality due to repair activities.

If operationally feasible, all repairs will take place during daylight hours in a three-week period commencing November 1, 2001, before the harbor seal pupping period and while the beach is open to the public. During this period few, if any, seals are present on shore because beachwalkers, dogs, joggers, kayakers, and others frequent the beach during daylight hours. During November, early storms and currents erode the sand covering the rocks and reefs, which will also reduce the amount of excavation necessary to expose the base of the pier pilings.

Work on pilings closest to the haul-out site will be conducted at the beginning of the project and only during low tides (American Marine Corp., 2000). Therefore, any potential for disturbing harbor seals would be limited

to approximately 4 hours each 24-hour period.

To reduce the potential for visual disturbance to the seals, mitigation measures will include, but will not be limited to: the diving air compressor, trucks, and equipment motors will be equipped with quiet mufflers; backup alarms on trucks will be disconnected; all lines, floats, cables, etc. used in handling materials will be secured to the pier; a large, weighted down tarp will be placed to hide workers on the beach from view; all personnel will be instructed to avoid rapid or sudden movements, shouting, throwing objects or other actions that could startle the seals; only the minimum number of people needed to perform the work on the beach at one time will be allowed; divers will be instructed to stay submerged while performing their tasks; and verbal communications from the pier or other project site to divers or workers will be via radio.

Successful implementation of additional mitigation measures by Venoco and their contractors would further reduce the potential for adverse impacts on Pacific harbor seals in the area.

#### **Monitoring**

NMFS will require Venoco to monitor the impact of pile driving and other repair activities on harbor seals. Monitoring will be conducted by one or more NMFS-approved biologists. Before an incidental harassment authorization can be issued to Venoco for this activity, NMFS must receive and accept a complete monitoring plan that includes: (1) a description of the proposed survey techniques that would be used to determine the movement and activity of harbor seals near the construction areas; and (2) scientific rigor that will allow NMFS to verify that any impacts on marine mammal populations from this specific activity are small in number and negligible.

#### **Reporting**

Venoco will provide monthly reports to the Southwest Regional Administrator, NMFS, including a summary of the previous month's monitoring activities and an estimate of the number of harbor seals that may have been harassed as a result of repair activities. These reports will provide dates, time, tidal height, weather, number of harbor seals seen (including sex and age class if possible), and any observed disturbances. A description of the repair activities at the time of observation will also be provided.

The final monitoring report is due within 90 days of completion of the

activity. This report will contain a description of the methods, results, and interpretation of all monitoring tasks.

#### **Endangered Species Act (ESA) Consultation**

This proposed authorization would not allow the take of any species listed as endangered or threatened under the ESA.

#### **Preliminary Conclusions**

NMFS has preliminarily determined that the impact of conducting repair activities at the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA will have a negligible impact on Pacific harbor seals in California. While behavioral modifications may be made by this species to avoid the resultant noise and activities, the avoidance of the area is not reasonably expected to, and is not reasonably likely to, adversely affect the annual rates of recruitment or survival of the stock.

The number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for such taking will be avoided through the incorporation of the mitigation measures mentioned in this document. Haul-out sites, rookeries, mating grounds, areas of concentrated feeding, and other areas of special significance for harbor seals within or near the planned area of operations will be avoided in order to avoid any potential impacts.

#### **Proposed Authorization**

NMFS proposes to issue an IHA for repair activities at the Carpinteria Oil and Gas Processing Facility in Carpinteria, CA from November 1, 2001 until November 1, 2002, provided the mitigation and monitoring plan proposed by the City and the reporting requirements defined by NMFS are implemented successfully. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of Pacific harbor seals and would have a negligible impact on these marine mammal stocks.

#### **Information Solicited**

NMFS requests interested persons to submit comments, and information, concerning this request Donna Wieting, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Dated: September 5, 2001.

**Ann D. Terbush,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01-22931 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082901E]

#### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's and the New England Fishery Management Council's Joint Dogfish Committee will hold a public meeting.

**DATES:** The meeting will be held on Friday, September 28, 2001, from 10 a.m. until 5 p.m.

**ADDRESSES:** This meeting will be held at the Comfort Inn at the Airport, 1940 Post Road, Warwick, RI; telephone: 401-732-0470.

*Council address:* Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904. New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 19, or Paul Howard, Executive Director, New England Fishery Management Council; telephone: 978-465-0492.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review updated fisheries and stock assessment information and to develop 2002-03 management measures for spiny dogfish. In addition, the Committee will review the Spiny Dogfish Amendment 1 Issues Paper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been

notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 4, 2001.

**Peter H. Fricke,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01-22809 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 082901D]

#### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee's Ad Hoc Marine Reserves Subcommittee will hold a public meeting.

**DATES:** The subcommittee will meet Monday, October 1, 2001, from 10 a.m. to 5 p.m., and Tuesday, October 2, 2001, from 8:30 a.m. until business for the day is completed.

**ADDRESSES:** The meeting will be held in Santa Barbara, CA. Contact the Council office for meeting location information, 503-326-6352.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Seger or Mr. Dan Waldeck, Pacific Fishery Management Council, 503-326-6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the work session will be to evaluate the scientific basis for determining reserve size. As time permits, other scientific issues relative to marine reserves may also be discussed.

Although nonemergency issues not contained in the meeting agenda may come before the subcommittee for discussion, those issues may not be the subject of formal subcommittee action

during this meeting. Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the subcommittee's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503-326-6352 at least 5 days prior to the meeting date.

Dated: September 5, 2001.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 01-22808 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

### U.S. Fish and Wildlife Service

[I.D. 083101A]

#### Marine Mammals and Endangered Species; National Marine Fisheries Service File No. 989-1602; U.S. Fish and Wildlife Service File No. 033958

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service, Interior.

**ACTION:** Return of application.

**SUMMARY:** Notice is hereby given that the application submitted by Geo-Marine, Inc., 550 East 15th St., Plano, TX 75074, for a permit to take all marine mammal species (*Cetacea*, *Pinnipedia*, and *Sirenia*) and sea turtle species occurring in waters of Puerto Rico for purposes of scientific research has been returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Ruth Johnson, Office of Protected Resources, NMFS, 301/713-2289.

**SUPPLEMENTARY INFORMATION:** On February 22, 2001, a notice was published in the **Federal Register** (66 FR 11155) that an application for a

scientific research permit had been filed by Geo-Marine, Inc.

The Applicant requested authorization to conduct aerial surveys for marine mammals and sea turtles in near-shore waters of Vieques, Puerto Rico. The objectives of the surveys were to determine occurrence, migration routes, and habitat utilization for the species occurring in the Inner Range, Atlantic Fleet Weapons Training Facility, Vieques. The applicant failed to respond within 60 days to reviewer comments in order to complete their application, and thus, the application has been returned.

Dated: August 31, 2001.

**Eugene T. Nitta,**

*Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: September 4, 2001.

**Lisa J. Lierheimer,**

*Acting Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.*

[FR Doc. 01-22806 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

September 6, 2001.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at <http://www.customs.gov>. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at <http://otexa.ita.doc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used and the rescinding of carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 75674, published on December 4, 2000.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

September 6, 2001.

Commissioner of Customs,  
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on September 12, 2001, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit <sup>1</sup>
Sublevel in Group I 218/225/317/326 .....	78,707,824 square meters of which not more than 4,341,659 square meters shall be in Category 218(1) <sup>2</sup> (yarn dyed fabric other than denim and jacquard).
Sublevels in Group II 338/339 <sup>3</sup> (shirts and blouses other than tank tops and tops, knit).	2,955,671 dozen.
631 .....	749,409 dozen pairs.
648 .....	1,208,635 dozen of which not more than 1,208,635 dozen shall be in Category 648-W. <sup>4</sup>
649 .....	957,348 dozen.
650 .....	197,976 dozen.
Within Group II sub-group	
350 .....	149,808 dozen.
Sublevels in Group III	
834 .....	14,246 dozen.
835 .....	118,723 dozen.

Category	Adjusted twelve-month limit <sup>1</sup>
836 .....	183,031 dozen.
840 .....	698,574 dozen.
842 .....	282,360 dozen.
847 .....	378,733 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 2000.

<sup>2</sup> Category 218(1): all HTS numbers except 5209.42.0060, 5209.42.0080, 5211.42.0060, 5211.42.0080, 5514.32.0015 and 5516.43.0015.

<sup>3</sup> Category 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

<sup>4</sup> Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,  
*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 01-22837 Filed 9-11-01; 8:45 am]

**BILLING CODE 3510-DR-S**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### Announcement of Intent To Grant a Limited Field Exclusive License to the Interests of the U.S. Government in Certain Inventions Generated Through Efforts of the U.S. Army, and U.S. Patent Applications, and for Patents Based Thereon

**AGENCY:** U.S. Army Tank-automotive and Armaments Command—Armament Research Development and Engineering Center (TACOM-ARDEC), DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Army announces, that unless there is objection, in fifteen days it will grant an Exclusive license to InvenCom LLC, 800 East Boulevard, Charlotte, NC 28203, limited to the field of application for any "Forcible Entry Apparatus" of the type that is placed in contact with the structure to be breached when utilizing the device, of the U.S. Government's interests in the following four inventions and in all patent applications and patents that result from or are based on same: (i) "Liquid Eject Propulsion Forcible Entry Device Power Supply" by

Charles A. Mossey, et al., Army docket no. 2001-005; (ii) "Liquid Eject Propulsion Forcible Entry Device Firing Circuit" by Charles A. Mossey, et al., Army docket no. 2001-026; (iii) "Liquid Eject Propulsion Forcible Entry Device And Burst Disc Mechanism Thereof" by Charles A. Mossey, et al., Army docket no. 2001-027; and (iv) "Recoilless Impact Device" by Charles A. Mossey, et al., U.S. patent application number 09/710,073, filed on November 10, 2000 (Army docket no. 2001-028).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Moran, Chief, Intellectual Property Law Division, AMSTA-AR-GCL, U.S. Army TACOM-ARDEC, Picatinny Arsenal, NJ 07806-5000, e-mail: [jfmoran@pica.army.mil](mailto:jfmoran@pica.army.mil) telephone (973) 724-6590.

**SUPPLEMENTARY INFORMATION:** Written objections must be filed on or before September 27, 2001.

**Luz D. Ortiz,**

*Army Federal Register Liaison Officer.*

[FR Doc. 01-22917 Filed 9-11-01; 8:45 am]

**BILLING CODE 3710-08-M**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Draft Programmatic Environmental Impact Statement for the Nationwide Permit Program

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Extension of comment period.

**SUMMARY:** In the July 31, 2001, issue of the **Federal Register** (66 FR 39499) the Corps of Engineers (Corps) announced the availability of the draft Programmatic Environmental Impact Statement (PEIS) for the Nationwide Permit (NWP) Program. The overall purpose of the draft PEIS is to review and evaluate the NWP program as a whole to ensure that the NWP program authorizes only activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. We have received several requests to extend the comment period, which ends September 14, 2001. To ensure ample opportunity to review the draft PEIS and to provide meaningful comments, we are extending the comment period 45 days to October 29, 2001. We have submitted a copy of the draft PEIS to EPA's Office of Federal Activities which is also publishing a Notice of Availability in September 14, 2001 **Federal Register**.

**DATES:** Comments on the draft PEIS must be received by October 29, 2001.

**ADDRESSES:** Mail comments to the U.S. Army Corps of Engineers, Institute for Water Resources, CEIWR-PD, 7701 Telegraph Road, Casey Building, Alexandria, Virginia 22315-3868.

Submit electronic comments to [NWPPEIS@usace.army.mil](mailto:NWPPEIS@usace.army.mil). See **SUPPLEMENTARY INFORMATION** for file formats and other information about filing electronic comments.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Brumbaugh, CEIWR-PD, at 703-428-6370 or to download a copy of the draft PEIS access <http://www.iwr.usace.army.mil/iwr/Regulatory/regulintro.htm> or for information on the Corps Regulatory program access <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>

**SUPPLEMENTARY INFORMATION:** The Corps has decided to prepare a voluntary PEIS on the Corps NWP Program, even though the Corps has determined that it is not legally required to do so. The PEIS will evaluate the NWP process (requirements and procedures) and examine and compare programmatic and procedural alternatives to the NWP Program. To accomplish this, the PEIS will look at the structure, implementation, and performance (in terms of achieving the stated goals) of the NWP Program as a whole. It will identify, evaluate, and compare programmatic alternatives and procedural changes to ensure that the adverse environmental effects of activities authorized by NWPs will be no more than minimal, individually and cumulatively. The PEIS will also examine how the procedures have been implemented in the Corps field offices to ensure that the adverse environmental effects of activities authorized by NWPs will be no more than minimal, individually and cumulatively. The PEIS will address the NWP Program and will not address the impacts of any specific NWP(s) (neither the existing NWPs nor the Corps current proposed reissuance of NWPs). The Corps of Engineers prepared an Environmental Assessment on the NWP Program that resulted in the issuance of a FONSI on June 23, 1998. There is no change in the proposal or the environmental aspect of the proposal examined in the EA; therefore, the Corps has determined that it is not required to prepare an EIS or a PEIS in order to comply with the National Environmental Policy Act (NEPA). The FONSI is available for review on the Corps Regulatory Program webpage <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. The NWP Program is designed and implemented

to ensure that the NWPs do not reach the threshold of environmental impacts that would require that an EIS be prepared. The Corps prepares an Environmental Assessment (EA) on each specific NWP when the Corps issues or reissues that NWP. These EAs are prepared at the Office of the Chief of Engineers, and are supplemented by the Division Engineers with regional information on potential environmental impacts, including adding regional conditions where necessary to ensure that the impacts of each NWP are minimal both individually and cumulatively.

As indicated above, the Corps has determined that the PEIS is not a legally required Environmental Impact Statement. The Corps is preparing the voluntary PEIS in accordance with Corps regulations at 33 CFR part 325, appendix B, and with CEQ regulations at 40 CFR parts 1500-1508. The Corps had hoped to complete the PEIS prior to the reissuance of the NWPs that were proposed on August 9, 2001, in the **Federal Register** at 66 FR 42070, even though the Corps has determined that completing the voluntary PEIS prior to reissuance is not legally required. However, with the extension of the comment period the Corps will not be able to complete the PEIS before the NWPs will need to be issued in order to ensure that the existing NWPs do not expire without new NWPs to take their place. The CEQ regulations at 40 CFR 1506.1(c) do not prohibit the Corps from issuing the NWPs prior to completing the voluntary PEIS, because the Corps has determined that the PEIS is not a required PEIS. We will thus be in full compliance with NEPA for the reissuance of the NWPs through preparation of an EA on each NWP prior to issuance. Moreover, the issuance of the NWPs by the end of this year will not preclude or limit the ability of the Corps to make modifications to the NWP Program or to make changes to the NWPs in accordance with any need for changes identified in the PEIS. The Corps can, and has in the past, issued revisions to existing NWPs and new NWPs prior to the expiration of NWPs five years from the date of issuance. The Corps has submitted this voluntary draft PEIS to EPA's Office of Federal Affairs (OFA) for review. In accordance with procedures specified in NEPA regulations, OFA is publishing in September 14, 2001, **Federal Register** a Notice of Availability of the draft PEIS for public review through October 29, 2001. In The draft PEIS can be downloaded from the Institute for Water Resources homepage at <http://>

[www.iwr.usace.army.mil/iwr/Regulatory/regulintr.htm](http://www.iwr.usace.army.mil/iwr/Regulatory/regulintr.htm) For those interested parties who cannot download documents from the Internet, a limited number of copies of the draft PEIS can be obtained by contacting the Institute for Water Resources at the address or telephone number above. You may submit comments by sending electronic mail (e-mail) to:

[NWPPEIS@usace.army.mil](mailto:NWPPEIS@usace.army.mil) Submit electronic comments as a text file and avoid the use of any special characters; do not use any form of encryption. Comments sent as attachments to electronic mail messages must be in text format to ensure that those attachments can be read by IWR. Comments sent electronically as attachments in word processing program formats will not be accepted.

**Charles M. Hess,**

*Chief, Operations Division, Directorate of Civil Works.*

[FR Doc. 01-22919 Filed 9-11-01; 8:45 am]

BILLING CODE 3710-92-P

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Intent To Prepare a Joint Environmental Impact Statement and Environmental Impact Report for the Sutter County Feasibility Study, Sutter County, CA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The action being taken is a feasibility investigation to (1) address improvements for the existing flood management systems, (2) investigate additional areas of flood protection for Sutter County, and (3) integrate ecosystem restoration. The study area is located within the boundaries of the Sacramento River Flood Control Project in Sutter County and includes the Sacramento, Feather, and Bear Rivers; Natomas Cross Canal; Sutter and Tisdale Bypasses; Wadsworth Canal; Yuba City and communities of Live Oak, Meridian, Robbins, Pleasant Grove, and Nicolaus.

#### FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and EIS/EIR should be addressed to Liz Holland at (916) 557-6763 or by mail to U.S. Army Corps of Engineers, ATTN CESPK-PD-R, 1325 J Street, Sacramento, California 95814-2922.

#### SUPPLEMENTARY INFORMATION:

### 1. Proposed Action

The U.S. Army Corps of Engineers, The Reclamation Board of the State of California, and the County of Sutter are conducting a feasibility investigation. The study focuses on reducing flood damages within the county of Sutter, California. The study area includes the Sacramento, Feather, and Bear Rivers; Sutter and Tisdale Bypasses; Natomas Cross Canal; and Wadsworth Canal. County population centers include Yuba City and the communities of Live Oak, Meridian, Robbins, Pleasant Grove, and Nicolaus.

### 2. Alternatives

The feasibility report will address an array of alternatives. Alternatives analyzed during the feasibility investigation will be a combination of one or more flood reduction measures identified during the reconnaissance phase; additional measures may be considered. These alternative measures include enlarge existing levees, levee realignment, ring levees, interceptor-levee/channel, reservoir reoperation, floodway protection program, dredging, vegetation management, and bypass reoperation/modification. Although an ecosystem restoration alternative has not been defined at this time, the alternatives currently identified would likely include ecosystem restoration components.

a. No Action. There will be no flood control projects implemented for Sutter County.

b. Enlarge existing levees along the Feather and Sacramento Rivers, and the Natomas Cross Canal.

c. Realign levees along the Feather, Bear, and Sacramento Rivers.

d. Construct a ring levee to the east of Yuba City.

e. Construct a channel or levee intercepting flows above Yuba City.

f. Reoperate Feather and Yuba River upstream reservoirs.

g. Adopt local flood plain management plan.

h. Remove sediment from the Sutter Bypass, Feather and Sacramento River, and canal systems.

i. Reoperate State pumps and drain lines.

j. Improve levees along the Sutter Bypass.

k. Modify Tisdale Bypass to convey higher flows earlier.

### 3. Scoping Process

a. The project study plan provides for a public scoping meeting and comment. The Corps has initiated a process of involving concerned individuals, and local, State, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS/EIR include appropriate levels of flood damage reduction, adverse effects on vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, land use, fisheries, water quality, air quality, transportation, socioeconomic, and cumulative effects of related projects in the study area.

c. The Corps will consult with the State Historic preservation Officer, and the U.S. Fish and Wildlife Service to provide a Fish and Wildlife Coordination Act Report as an appendix to the EIS/EIR.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the EIS/EIR circulation.

### 4. Availability

The draft EIS/EIR is scheduled to be available for public review and comment late in calendar year 2002.

Dated: August 23, 2001.

**Colonel Michael J. Conrad, Jr.,**  
*Commanding.*

[FR Doc. 01-22916 Filed 9-11-01; 8:45 am]

BILLING CODE 3710-EZ-M

## DEPARTMENT OF ENERGY

(Docket No. EA-234)

### Application To Export Electric Energy; Energia de Baja California

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Application.

**SUMMARY:** Energia de Baja California (EBC) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before October 13, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

#### FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a

foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 22, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from EBC to transmit electric energy from the United States to Mexico. In a related proceeding currently before DOE (FE Docket PP-234), EBC has applied for a Presidential permit to construct, operate, maintain, and connect a new electric transmission facility between San Diego Gas and Electric Company's (SDG&E's) Imperial Valley Substation in Imperial County, California, and a merchant powerplant EBC is proposing to construct in the vicinity of Mexicali, Baja California, Mexico. The electric energy EBC proposes to export to Mexico would be for the purpose of providing start-up and other station use power. Exports from the United States to the EBC plant for these purposes is expected to be less than 17 megawatts.

The electric energy EBC proposes to export to Mexico would be purchased on the open market and delivered to SDG&E's Imperial Valley Substation using the existing domestic transmission system. The exported electricity would be transmitted to Mexico over the facilities proposed in FE Docket PP-234.

#### Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the EBC application to export electric energy to Mexico should be clearly marked with Docket EA-234. Additional copies are to be filed directly with Orlando Martinez, Manager, Development, InterGen, Two Alhambra Plaza, Suite 1100, Coral Gables, FL 33134-5202 AND Russell Wood, Hunton & Williams, 1900 K Street, NW, Washington, DC 20006.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select "Electricity Regulation" and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on September 6, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01-22844 Filed 9-11-01; 8:45 am]

**BILLING CODE 6450-01-P**

#### DEPARTMENT OF ENERGY

[Docket No. EA-249]

#### Application To Export Electric Energy; Exelon Generation Company, LLC

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Exelon Generation Company, LLC (Exelon) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before October 12, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:** Rosalind Carter (Program Office) 202-586-7983 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 20, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Exelon to transmit electric energy from the United States to Canada. Exelon, a Pennsylvania corporation with its principal place of business in Kennett Square, Pennsylvania, is a power marketer and wholly-owned subsidiary of Exelon Corporation, an electric utility holding company. Exelon owns generation facilities but does not

have a franchised service area. The power to be exported will be generated by Exelon or will be purchased from electric utilities, power marketers, and federal power marketing agencies in the United States.

Exelon proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Exelon, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

#### Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Exelon application to export electric energy to Canada should be clearly marked with Docket EA-249. Additional copies are to be filed directly with Majorie R. Philips, Attorney, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.de.gov>. Upon reaching the Fossil Energy Home page, select "Electricity

Regulation,” and then “Pending Procedures” from the options menus.

Issued in Washington, DC, on September 6, 2001.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01-22842 Filed 9-11-01; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

[Docket No. EA-210-A]

### Application To Export Electric Energy; PPL EnergyPlus, LLC

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** PPL EnergyPlus, LLC (PPL EnergyPlus) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before October 12, 2001.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE-27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-287-5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202-586-4708 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 19, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA-210 authorizing PPL EnergyPlus to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, International Transmission Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Inc., Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power,

and Vermont Electric Transmission Company. That two-year authorization expired on July 19, 2001.

On August 21, 2001, PPL EnergyPlus filed an application with FE for renewal of this export authority and requested that the authorization be granted for a five-year term.

### Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PPL EnergyPlus request to export to Canada should be clearly marked with Docket EA-210-A. Additional copies are to be filed directly with, Jesse A. Dillon, Esq., Senior Counsel, PPL Services Corporation, Two North Ninth Street, Allentown, PA 18101, Lisa H. Tucker, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006 and John F. Cotter, Vice President—Energy Marketing and Trading, PPL EnergyPlus, LLC, Two North Ninth Street, Allentown, PA 18101.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order No. EA-210. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-210 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at <http://www.fe.doe.gov>. Upon reaching the Fossil Energy Home page, select “Electricity,” from the Regulatory Info menu, and then “Pending Proceedings” from the options menus.

Issued in Washington, DC, on September 6, 2001.

**Anthony Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 01-22843 Filed 9-11-01; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### National Transmission Grid Study 2001

**AGENCY:** Department of Energy.

**ACTION:** Notice of public workshops.

**SUMMARY:** This notice announces the National Transmission Grid Study, a set of public workshops, and request comments. President George W. Bush unveiled his National Energy Policy (NEP) on May 17, 2001. Included in the NEP were 105 recommendations to produce more reliable, affordable and environmentally clean energy. One of the recommendations directed the Secretary of Energy to examine the benefits of establishing a national electrical grid, identifying major transmission bottlenecks and remedies to remove them. This National Transmission Grid Study 2001 (NTGS 2001) will identify the major transmission bottlenecks across the U.S. It will examine both the technical and economic issues resulting from these transmission constraints and provide innovative solutions to reverse these trends. A 21st century transmission super highway that utilizes new technology to ensure reliability will be the driver that serves the growing needs of our economy. A vibrant and reliable transmission system is essential to lowering the cost of electricity for customers all across the country. The NTGS 2001 will recommend regulatory and market based approaches that will stimulate new investment in our interstate bulk power transmission systems. The NTGS 2001 team will work with our nation's Governors to ensure that state's views are heard in the process of developing this study.

**DATES:** DOE will host public workshops at the following dates, times and locations. The agenda and subject matter will be the same for each workshop. Those planning to attend the workshops should register at [www.ntgs.doe.gov](http://www.ntgs.doe.gov)

—September 24th/9 a.m.—4 p.m./

Detroit, Michigan.

Detroit Marriott Romulus, Metro Airport, 30559 Flynn Drive, Romulus, MI 48174.

—September 26th/9:00 a.m.—4:00 p.m./

Atlanta, GA.

Hyatt Regency, 265 Peachtree Street NE, Atlanta, GA 30303.

—September 28th/9:00 a.m.—4:00 p.m./

Phoenix, Arizona.

Phoenix Airport Marriott, 1101 North 44th Street, Phoenix, AZ 85008.

**Public Participation:** The workshops are open to the public. If you would like to submit written comments, they can be submitted at a workshop or to either

address below on or before October 10, 2001. E-mailed comments are recommended.

**ADDRESSES:** Send comments to: [www.ntgs.doe.gov](http://www.ntgs.doe.gov) or Paul Carrier, Office of Policy and International Affairs (PI-22), US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** NTGS 2001's web site at [www.ntgs.doe.gov](http://www.ntgs.doe.gov) or contact Paul Carrier, NTGS 2001 DOE Program Office of Policy and International Affairs (202) 586-5659. Vincent DeVito, NTGS 2001 Counsel (202) 586-8660.

**SUPPLEMENTARY INFORMATION:** The purpose of the workshops is to address and solicit comments on the NTGS 2001 and, in particular, on the following issues identified by the study team to facilitate discussion.

#### **Transmission Planning and the Need for New Capacity**

The character of transmission planning is changing dramatically as the structure of the U.S. electricity industry shifts from one dominated by vertically integrated utilities to one in which new and evolving regional transmission organizations will be primarily responsible for these plans. In addition, the emergence of wholesale electricity markets changes the details of transmission planning in many ways, most of which are still in flux. These changes in industry structure raise important issues about transmission planning and the need for new transmission capacity, including: (1) The need for clear transmission-planning criteria, which includes appropriate measures and consideration of reliability and commerce as well as siting and other environmental effects; (2) the integration of planning for transmission, generation, and demand-side management programs (including consideration of nontransmission alternatives that can meet reliability requirements and commercial needs); (3) the role of new technologies that might reduce the need to build large transmission facilities; (4) the need for high-quality data and projections on the types, timing, size and locations of new generating units and on the magnitudes and shapes of customer loads; (5) the need for advanced planning methods that can deal with a multiplicity of alternative futures; (6) the role of merchant (unregulated, for-profit) transmission projects; (7) the possible effects of new transmission facilities on the ability of some generators to artificially raise market prices for energy; and (8) the potential benefits of

proactive transmission plans that can guide future investments in, and the locations, of generation and demand-management programs.

#### **Transmission Siting and Permitting**

In recent years, two conflicting trends have caught the attention of energy policy officials and the electricity industry. One is that across the nation the need for electricity transmission system improvements is growing; in fact, it has already become urgent in some areas. The other is that it has become increasingly difficult to obtain approvals from pertinent state and federal agencies for the siting and construction of proposed major additions or upgrades of the nation's electric transmission grids. Further, although bulk power markets now span large multistate regions, the existing regime for siting and permitting of transmission facilities remains fundamentally state based. This regime may not be well adapted to reviewing proposed new transmission facilities from a regional perspective. The policy options for addressing transmission siting and permitting in a restructured electricity industry fall into three major categories: (1) Options to establish regional or federal siting institutions with authority to obtain rights-of-way for new transmission projects; (2) options to improve the existing state-based regime for transmission siting; and (3) options that could improve siting practices by government agencies and the electricity industry under any governance structure.

#### **Business Models for Transmission Investment and Operation**

A common theme in restructured electricity systems around the world is the unbundling of generation, transmission, and distribution and the creation of independent transmission entities that link competitive generation to regulated distribution. The restructured transmission entities can encompass three business functions: system operation, market operation, and grid ownership. To a large extent, current transmission sector business models are based on the previous grid ownership structure and on political expediency. In the U.S. where a large portion of the electricity grid is owned by investor-owned utilities, formation of non-profit Independent System Operators (ISOs) to control but not own deregulated transmission assets was a convenient approach that enabled restructuring to move forward without requiring utilities to divest their transmission assets. By contrast, in countries such as the U.K. or Spain

where the government or private entities previously owned the transmission assets, restructuring entailed formation of for-profit independent transmission companies (ITCs). Both the ISO and ITC business models have strengths, weaknesses, and multiple variants. Federal Energy Regulatory Commission (FERC) order 2000 and subsequent orders concerning the formation of Regional Transmission Organizations (RTOs) do not identify a preferred business model for transmission functions. The need to evaluate alternative business models for transmission enterprises is prompted by the moves toward large RTOs, current experiences with the ISO structure and the development of RTO proposals that advocate formation of for-profit ITCs. Key issues related to the choice of business model for RTOs include the political feasibility of different models as well as their effects on: (1) market efficiency; (2) system reliability; (3) operational efficiency; (4) transmission access and interconnection policies; (5) transmission system investment and innovation; and (6) governance and regulatory oversight.

#### **Operation of Interconnected Transmission Systems**

Electric power systems were originally interconnected for two purposes: reliability and economy. Operation protocols evolved for the interconnected system that permitted maintenance of system frequency, monitoring of trades between regions, and the prevention of major power outages as the result of single contingencies such as the sudden loss of any system component. Interconnection also led to a variety of problems: loop flows, inter-regional stability concerns, and issues associated with management and coordination of a very large, diverse set of generators and loads. The advent of competitive energy markets has blurred the sharp distinction between reliability and economy so that reliable service may become a commodity. In addition, the voluntary cooperation by which utilities and others involved in system operation performed their tasks has been difficult to maintain as former partners become competitors. Two main approaches for dealing with short-term reliability issues (particularly congestion of components) have evolved: the first approach is a system whereby parties that are engaging in transactions curtail them according to prescribed rules whenever reliability becomes a concern. The transmission loading relief (TLR) protocol is the embodiment of this approach. The second approach is market-based in

which spatial price patterns are created that lead market participants to relieve congestion through actions taken in their own self-interest. Locational pricing, such as nodal pricing, "flowgate" pricing, and to a lesser extent zonal pricing, are embodiments of this second approach. Issues of concern for operation of interconnected power systems include: (1) Could the entire U.S. electricity grid be operated as one integrated whole or a few large integrated markets? (2) How could we assure reliability of such an integrated or national electricity grid? (3) What are the merits of and appropriate relationship between "mandated" approaches (e.g., reliance on TLR protocols), and "market-based" approaches, such as real-time and day-ahead markets to ensure system reliability?

#### Reliability Management and Oversight

Assuring power system reliability is both a physical and organizational activity. Specific activities must take place but they do so within a commercial and political framework. Determining who sets the rules for power system reliability and how may be the most challenging aspect of maintaining reliability in a restructured electricity industry. Historically, the vertically integrated utility industry utilized the North American Electric Reliability Council (NERC) a bottom-up, industry-dominated, volunteer organization to establish reliability rules and monitor compliance. The restructured industry will require a more open and inclusive process for establishing mandatory standards and monitoring and enforcing compliance. To assure reliability the following issues need to be addressed: (1) The physical constraints and requirements of the electricity system; (2) who should make decisions about reliability and the technical and economic bases for those decisions; (3) who takes what risk (communal versus individual risks); (4) how reliability costs are assessed; (5) how to address the inevitable disputes that will arise over reliability decisions; (6) what should be the scope of reliability decisions (regional vs. national); (7) how to assess alternative means of supplying reliability services (including the use of customer loads as reliability resources), and how technology is expanding these options; and (8) evaluating proposed institutional structures for insuring reliability.

#### New Transmission Technologies

Electric industry restructuring is based in part on the assumption of a

transmission system that is flexible, reliable, and open to all exchanges no matter where the suppliers and consumers of energy are located. However, neither the existing transmission system nor its management infrastructure can fully support this open exchange. Some desirable market transactions are quite different from those envisioned when the transmission system was designed, and they may stress the limits of safe operation. The risk posed by such transactions may not be recognized in time to avert major system emergencies, which may be difficult to manage without loss of customer load. It is also increasingly common for one transaction to interfere with others, producing "congestion" in the system. These problems can be remedied in part by direct technical reinforcements to the transmission system, in the form of improved hardware technology. Another need is for indirect reinforcements to the general infrastructure for grid operations and planning. Progress in both areas has, for many years, been hampered by electricity restructuring. This process is far from complete, and it has greatly weakened the essential dialog between technology developers and technology users. Development of new technology must be closely linked to its actual deployment for operational use. Together, both activities should reflect, serve, and keep pace with the evolving infrastructure needs of transmission organizations. This is not happening. Neither the details nor the needs of this infrastructure are well known, and all parties are understandably averse to investments that may not be promptly and directly beneficial to them. As a result many promising technologies are stuck at various points in the "pipeline" from concept to practical use. Included among them are superconducting equipment, large scale devices for routing power flow on the grid (HVDC and FACTS), real time operating tools for enhanced management of grid assets, and a new generation of system planning methods that are robust against uncertainty. A critical issue is that some enabling technologies for healthy and reliable electricity commerce are not attractive to individual commercial entities, but should be developed and deployed in furtherance of the public good. To summarize, key issues include: (1) The capability and cost of new technologies to improve operation of the transmission system; and (2) the requirements of and institutional options available to support timely development and deployment of these

technologies through the current period of industry restructuring.

Issued in Washington, DC, on September 6, 2001.

**Margot Anderson,**

*Deputy Assistant Secretary, Office of Policy and International Affairs.*

[FR Doc. 01-22841 Filed 9-11-01; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP01-533-000]

#### ANR Pipeline Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 30, 2001, ANR Pipeline Company ("ANR"), 9 Greenway Plaza, Houston, Texas 77046, tendered for filing Thirty First Revised Sheet No. 17 from its FERC Gas Tariff, Second Revised Volume No. 1 and Seventeenth Revised Sheet No. 14 from its FERC Gas Tariff Original Volume No. 2, to be effective October 1, 2001.

ANR state that the purpose of the filing is to reflect a decrease in the ACA rate adjustment to ANR's commodity rates effective October 1, 2001. The tariff sheets reflect a decrease of \$.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of \$.0021 per Dth for fiscal year 2001.

ANR state that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically

via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22873 Filed 9-11-01; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-562-000]

#### ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice that on August 31, 2001, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective September 1, 2001:

Forty-eighth Revised Sheet No. 8  
Forty-eighth Revised Sheet No. 9  
Forty-seventh Revised Sheet No. 13  
Fifty-eighth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately \$2.0 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS-2, so as to recover the remaining ten percent (10%). ANR advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from \$2,995,512 to \$1,968,858.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22898 Filed 9-11-01; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-529-000]

#### ANR Storage Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 30, 2001, ANR Storage Company ("ANR Storage"), 9 Greenway Plaza, Houston, Texas 77046, tendered for filing Seventh Revised Sheet No. 5 from its FERC Gas Tariff, Original Volume No. 1 and Tenth Revised Sheet No. 1(a) from its FERC Gas Tariff Original Volume No. 2, to be effective October 1, 2001.

ANR states the purpose of the filing is to reflect a decrease in the ACA rate adjustment to ANR Storage's commodity rates effective October 1, 2001. The tariff sheets reflect a decrease of \$.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of \$.0021 per Dth for fiscal year 2001.

ANR state that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be

viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22870 Filed 9-11-01; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-531-000]

#### Blue Lake Gas Storage Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 30, 2001, Blue Lake Gas Storage Company ("Blue Lake"), 9 Greenway Plaza, Houston, Texas 77046, tendered for filing Seventh Revised Sheet No. 5 from its FERC Gas Tariff, First Revised Volume No. 1 to be effective October 1, 2001.

Blue Lake states that the purpose of the filing is to reflect a decrease in the ACA rate adjustment to Blue Lake's commodity rates effective October 1, 2001. The tariff sheet reflects a decrease of \$.0001 per Dth in the ACA adjustment surcharge, resulting in a new ACA rate of \$.0021 per Dth for fiscal year 2001.

Blue Lake states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link,

select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22871 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-537-000]

#### Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice that on August 31, 2001, Colorado Interstate Gas Company ("CIG") tendered for filing and acceptance by the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective October 1, 2001:

Original Sheet No. 11C

Original Sheet No. 11D

CIG states that the above tariff sheets are being filed to implement new negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-SERVICE Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

CIG states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance).

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22876 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-550-000]

#### Columbia Gas Transmission Corporation; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of October 1, 2001:

Fifty-first Revised Sheet No. 25

Fifty-first Revised Sheet No. 26

Fifty-first Revised Sheet No. 27

Forty-sixth Revised Sheet No. 28

Columbia states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2001, of \$0.0021 per Dth.

Columbia states that copies of this filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22887 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-547-000]

#### Columbia Gulf Transmission Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of October 1, 2001:

Twenty-sixth Revised Sheet No. 18

Sixteenth Revised Sheet No. 18A

Twenty-seventh Sheet No. 19

Columbia Gulf states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2001, of \$0.0021 per Dth.

Columbia Gulf states that copies of this filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov>

[www.ferc.gov](http://www.ferc.gov) using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22885 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-559-000]

#### Cove Point LNG Limited Partnership; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Cove Point LNG Limited Partnership (Cove Point) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. The tariff sheets are proposed to be effective October 1, 2001.

Cove Point states that the purpose of the instant filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Cove Points rates. Pursuant to Order No. 472, the Commission has assessed Cove Point its ACA unit Rate of \$.0021/dt, effective October 1, 2001.

Cove Point states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the

instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22895 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-546-000]

#### Crossroads Pipeline Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5, with a proposed effective date of October 1, 2001.

Crossroads states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2001, of \$0.0021 per Dth.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22884 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-561-000]

#### Egan Hub Partners, L.P.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice that on August 31, 2001, Egan Hub Partners, L.P. (Egan Hub) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective on October 1, 2001.

Egan Hub states that the purpose of this filing is to clarify certain tariff provisions and correct omissions and typographical errors in the tariff that Egan Hub has identified during its first several months of operations as part of Duke Energy Gas Transmission.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22897 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-549-000]

#### Granite State Gas Transmission; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Granite State Gas Transmission (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, bearing a proposed effective date of October 1, 2001:

Twenty-fourth Revised Sheet No. 21  
Twenty-fifth Revised Sheet No. 22  
Sixteenth Revised Sheet No. 23

Granite State states that the purpose of this filing is to reflect the new Annual Charge Adjustment (ACA) surcharge to be applied to rates commencing October 1, 2001, of \$0.0021 per Dth.

Granite State states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22886 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-534-000]

#### Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice that on August 30, 2001, Gulf South Pipeline Company, LP ("Gulf South") tendered for filing as part of its Sixth Revised Volume No. 1 FERC Gas Tariff, the following tariff sheets to become effective October 1, 2001.

Sixth Revised Volume No. 1  
First Revised Sheet No. 20  
First Revised Sheet No. 21  
First Revised Sheet No. 22  
First Revised Sheet No. 23  
First Revised Sheet No. 24

Gulf South states that the purpose of this filing is to update Gulf South's tariff to reflect the Annual Charge Adjustment (ACA) factor to be effective for the twelve-month period beginning October 1, 2001.

Gulf South states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed

electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22874 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-541-000]

#### Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 4A. The proposed effective date of this revised tariff sheet is October 1, 2001.

Iroquois states that, pursuant to Section 154.02 of the Commission's regulations and Section 12.2 of the General Terms and Conditions of its tariff, it is filing the referenced tariff sheet to reflect a decrease in the Annual Charge Adjustment surcharge to \$0.0021 per Dth.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,  
Secretary.

[FR Doc. 01-22879 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-560-000]

#### Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Kinder Morgan Gas Transmission LLC (KMIGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1-A, Fourth Revised Sheet No. 4D, with an effective date of October 1, 2001.

KMIGT is filing the above-referenced tariff sheet in order to reflect the Commission's authorized ACA charge to be in effect for the twelve-month period effective October 1, 2001.

KMIGT states that a copy of this filing has been served upon all of its customers, interested state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,  
Secretary.

[FR Doc. 01-22896 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-553-000]

#### Michigan Gas Storage Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Michigan Gas Storage Company (MGS) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 5, to be effective October 1, 2001.

MGS states that the purpose of this filing, which is made in accordance with Section 154.402 of the Commission's Regulations, is to reflect the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates in FY 2002 for recovery of Annual Charges pursuant to Order No. 472 in Docket No. RM87-3-000. The new surcharge is \$0.0021 per Dt. of natural gas transported.

MGS state that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,  
Secretary.

[FR Doc. 01-22890 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-542-000]

#### National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 2001.

Take notice that on August 31, 2001, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective September 1, 2001.

Thirty Ninth Revised Sheet No. 9

National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of \$0.24 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

David P. Boergers,  
Secretary.

[FR Doc. 01-22880 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP01-552-000]****National Fuel Gas Supply Corporation; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 2001:

Seventeenth Revised Sheet No. 8  
Fortieth Revised Sheet No. 9  
Seventh Revised Sheet No. 10  
Fifth Revised Sheet No. 11

National declares that the purpose of this filing is to state the Annual Charge Adjustment (ACA) unit surcharge authorized by the Commission for Fiscal 2002 is \$.0021 per Dth.

National states that copies of this filing were served on National's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22889 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP01-556-000]****Panhandle Eastern Pipe Line Company; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to become effective October 1, 2001:

Sixty-Second Revised Sheet No. 4  
Sixty-Second Revised Sheet No. 5  
Sixty-Second Revised Sheet No. 6  
Sixty-Fifth Revised Sheet No. 7  
Sixty-Fifth Revised Sheet No. 8  
Forty-First Revised Sheet No. 15  
Sixth Revised Sheet No. 17  
Twenty-Seventh Revised Sheet No. 19

Panhandle states the filing is made in accordance with Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. These revised tariff sheets reflect the surcharge attributable to fiscal year 2001 program costs of \$0.0021 per Dt of natural gas transported.

Panhandle states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22893 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP01-532-000]****PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001, PG&E Gas Transmission, Northwest Corporation ("GTN") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1-A Thirty-third Revised Sheet No. 4, Eighteenth Revised Sheet No. 4A, Fifth Revised Sheet No. 5B, and Thirteenth Revised Sheet No. 6C in order to adjust the Annual Charge Adjustment ("ACA") surcharge for jurisdictional transportation customers in accordance with the Commission's most recent Annual Charge billing to GTN. GTN requests that these tariff sheets become effective October 1, 2001.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22872 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-558-000]

#### **Pine Needle LNG Company, LLC; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001 Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised First Revised Sheet No. 4. The tariff sheet is proposed to be effective October 1, 2001.

Pine Needle states that the purpose of the instant filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Pine Needle's rates. Pursuant to Order No. 472, the Commission has assessed Pine Needle its ACA unit Rate of \$.0021/dt, effective October 1, 2001.

Pine Needle states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22894 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-555-000]

#### **Sea Robin Pipeline Company; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to become effective October 1, 2001:

Seventh Revised Sheet No. 7  
Third Revised Sheet No. 7a  
Seventh Revised Sheet No. 8

Sea Robin states the filing is made in accordance with Section 19 (Annual Charge Adjustment Clause) of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. These revised tariff sheets reflect the surcharge attributable to fiscal year 2001 program costs of \$0.0021 per Dt of natural gas transported.

Sea Robin states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22892 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-543-000]

#### **Southwest Gas Storage Company; Notice of Tariff Filing and Annual Charge Adjustment**

September 6, 2001.

Take notice that on August 31, 2001, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet proposed to become effective October 1, 2001:

Fourth Revised Sheet No. 5

Southwest states the filing is made in accordance with Section 3.5 of Rate Schedules FSS and ISS in its FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheet reflects the surcharge attributable to fiscal year 2001 program costs of \$0.0021 per Dt.

Southwest states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22881 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP01-429-000]

#### Tennessee Gas Pipeline Company; Notice of Application

September 6, 2001.

Take notice that on August 22, 2001, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP01-429-000, an application, pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Regulations for abandonment authorization for compression facilities in Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to abandon an 8,000 horsepower compressor unit at its Compressor Station 538 located near Heidelberg, Jones County, Mississippi. It is stated that the compressor unit was installed to increase long-haul throughput capacity on Tennessee's Delta-Portland Line to meet the system requirements of existing customers. It is explained that the compressor is no longer needed because capacity on the system has been increased by means of additional pipeline looping and compression, as well as a pigging program that resulted in greater pipeline efficiencies. It is further explained that changing markets and a decline in production in the southeastern Louisiana supply areas have lessened the need for the compressor. Tennessee proposes to abandon the compressor unit and related auxiliary facilities, including a fuel meter, by removal. It is estimated that the cost of removal of the facilities is \$300,000. Tennessee asserts that the removal of the compressor unit will not impact current firm commitments on Tennessee's system.

Any questions regarding this application should be directed to Jay V. Allen, at (832)676-5589, or Veronica Hill at (832)676-3295.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

should, on or before September 27, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the Commission's website at <http://www.ferc.fed.us/efi/doorbell.htm>.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a

person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22869 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-539-000]

#### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice on August 31, 2001, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective November 1, 2001.

Tenth Revised Sheet No. 14

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 "Fuel Retention" as found in the General Terms and Conditions of the Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP may be in effect for the annual period November 1, 2001, through October 31, 2002. In general, the instant filing results in a minimal overall annual impact on most customers due to the fact each season and each zone of delivery has some EFRPs that increase and some that decrease from percentages charged during the last annual period.

Texas Gas states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance).

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22877 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-540-000]

#### Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The tariff sheets are proposed to be effective October 1, 2001.

Transco states that the purpose of the instant filing is to reflect a decrease in the Annual Charge Adjustment (ACA) Charge in the commodity portion of Transco's rates. Pursuant to Order No. 472, the Commission has assessed Transco its ACA unit Rate of \$.0021/dt, effective October 1, 2001.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22878 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-554-000]

#### Trunkline Gas Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets proposed to become effective October 1, 2001:

Thirty-Ninth Revised Sheet No. 6  
Thirty-Eighth Revised Sheet No. 7  
Thirty-Ninth Revised Sheet No. 8  
Thirty-Ninth Revised Sheet No. 9  
Twenty-First Revised Sheet No. 9A  
Eleventh Revised Sheet No. 9B  
Thirty-Eighth Revised Sheet No. 10  
Twenty-Fourth Revised Sheet No. 10A

Trunkline states the filing is made in accordance with Section 21 (Annual Charge Adjustment Provision) of the General Terms and Conditions in its FERC Gas Tariff, First Revised Volume No. 1. These revised tariff sheets reflect the surcharge attributable to fiscal year 2001 program costs of \$0.0021 per Dt of natural gas transported.

Trunkline states that copies of this filing are being served on all affected customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22891 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-545-000]

#### Venice Gathering System, L.L.C.; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Venice Gathering System, L.L.C. (VGS), filed as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed tariff sheet, with an effective date of October 1, 2001:

Third Revised Sheet No. 4

VGS states that this filing is submitted pursuant to Section 154.402(c) of the Commission's Regulations and Section 12.4 of the General Terms and Conditions of VGS' FERC Gas Tariff. VGS states that this is its first ACA charge filing, and that it has revised Sheet No. 4 to reflect the ACA unit charge of \$.0021 per Dekatherm specified by the Commission in Bill No. M1G10033.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22883 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-551-000]

#### WestGas Interstate, Inc.; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, WestGas Interstate, Inc. (WGI), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 5, with a proposed effective date of October 1, 2001.

WGI states that, pursuant to Section 154.402 of the Commission's regulations and Section 21 of the General Terms and Conditions of its tariff, WGI is making its Annual Charge Adjustment (ACA) filing to reflect a decrease of \$0.0001 per Dth, from \$0.0022 to \$0.0021 per Dth, in its ACA surcharge.

WGI states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22888 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-535-000]

#### Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 2001.

Take notice that on August 30, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets to become effective October 1, 2001:

Eighteenth Revised Sheet No. 6A

The revised tariff sheets are being filed pursuant to Section 26 of the General Terms and Conditions of Williams' Gas Tariff, Original Volume No. 1, which affords Williams the right to recover the costs billed to Williams by the FERC via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is \$.0021/Dth as set forth on Williams' Annual Charges Bill for fiscal year 2001, to be effective October 1, 2001.

Williams states that the copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before

September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22875 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-544-000]

#### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing and Annual Charge Adjustment

September 6, 2001.

Take notice that on August 31, 2001, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets, to become effective October 1, 2001:

*Second Revised Volume No. 1*

Forty-Third Revised Sheet No. 15  
Forty-Fourth Revised Sheet No. 16  
Forty-Second Revised Sheet No. 18  
Thirty-Eighth Revised Sheet No. 21

*Original Volume No. 2*

Eighty-Seventh Revised Sheet No. 11B

Williston Basin states that the filing reflects a revision to the Federal Energy Regulatory Commission's Annual Charge Adjustment (ACA) unit charge amount pursuant to the Commission's Statement of Annual Charges under 18 CFR part 382 and Section 41 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1. The filing reflects the Commission-approved Annual Charge Adjustment unit charge of \$.0021 per dth.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-22882 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER01-1099-006, et al.]

#### Cleco Power LLC, et al.; Electric Rate and Corporate Regulation Filings

September 6, 2001.

Take notice that the following filings have been made with the Commission:

##### 1. Cleco Power LLC

[Docket No. ER01-1099-006]

Take notice that on August 31, 2001, Cleco Power LLC (Cleco Power), tendered for filing a second substitute original Rate Schedule 12 and a substitute original Rate Schedule 13. On June 23, 2001, Cleco Utility Group Inc.'s Rate Schedules 15 and 16 were canceled and refiled as Cleco Power's Rate Schedules 12 and 13, respectively. Cleco Power filed a second substitute original Rate Schedule 12 and a substitute original Rate Schedule 13 to include the whereas clauses that were in Cleco Utility Group Inc.'s Rate Schedules 15 and 16 but were omitted from Cleco Power's original Rate Schedules 12 and 13.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 2. Wisconsin Electric Power Company

[Docket No. ER01-2648-001]

Take notice that on August 31, 2001, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a compliance filing as requested in docket ER01-2648-000 to address Order 614 First Revised Service Agreement No. 12.

Copies of the filing have been served on Excelsior Generation Company, LLC, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 3. Southern Company Services, Inc.

[Docket No. ER01-2863-001]

Take notice that on August 31, 2001, Southern Company Services, Inc. (SCS), on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), tendered for filing certain revised sheets in connection with a Notice of Cancellation of rate schedules filed on August 20, 2001.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 4. New England Power Pool

[Docket No. ER01-2983-000]

Take notice that on August 31, 2001, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Poquonock River Funding, L.L.C. (PRF); and (2) to terminate the membership of DukeSolutions, Inc. The Participants Committee requests an effective date of November 1, 2001 for commencement of participation in NEPOOL by PRF and September 1, 2001 for the termination of DukeSolutions, Inc.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 5. Cinergy Services, Inc.

[Docket No. ER01-2984-000]

Take notice that on August 31, 2001, Cinergy Services, Inc. tendered for filing an unexecuted Interconnection Agreement by and between Cinergy Services, Inc. (Cinergy) and Duke Energy Vgo, LLC (Duke Energy Vgo),

and an unexecuted Facilities Construction Agreement by and between Cinergy and Duke Energy Vgo.

Cinergy requests an effective date of August 31, 2001 for both the unexecuted Interconnection Agreement and the unexecuted Facilities Construction Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and Duke Energy Vgo.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 6. Commonwealth Edison Company

[Docket No. ER01-2985-000]

Take notice that on August 31, 2001, Commonwealth Edison (ComEd) filed in unexecuted form an interconnection agreement between ComEd and Zion Energy, LLC.

ComEd has requested an effective date of September 1, 2001 for this agreement.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 7. Oklahoma Gas and Electric Company

[Docket No. ER01-2987-000]

Take notice that on August 31, 2001, Oklahoma Gas and Electric Company (OGE) submitted for filing a revised Interconnection Agreement between OGE and Redbud Energy LP. (Redbud). OGE requests an effective date for the revised Interconnection Agreement of July 30, 2001, and, accordingly, seeks waiver of the Commission's notice requirements.

OGE states that a copy of the filing was served on Redbud, the Oklahoma Corporation Commission and the Public Utility Commission of Texas.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

##### 8. Virginia Electric and Power Company

[Docket No. ER01-2989-000]

Take notice that on August 31, 2001, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) with Industrial Power Generating Corporation (Ingenco). The Interconnection Agreement sets forth the terms and conditions under which Dominion Virginia Power will provide interconnection service for Ingenco's generating facility.

Dominion Virginia Power respectfully requests that the Commission waive its

notice of filing requirements and requests an effective date of August 24, 2001 for the Interconnection Agreement.

Copies of the filing were served upon Industrial Power Generating Corporation and the Virginia State Corporation Commission.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **9. Ameren Services Company**

[Docket No. ER01-2990-000]

Take notice that on August 31, 2001, Ameren Services Company (ASC) tendered for filing a Transmission System Interconnection Agreement and Parallel Operating Agreement between ASC and Kinder Morgan Missouri, LLC. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Kinder Morgan Missouri, LLC pursuant to Ameren's Open Access Transmission Tariff.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **10. Wisconsin Public Service Corporation**

[Docket No. ER01-2991-000]

Take notice that on August 31, 2001, Wisconsin Public Service Corporation (WPSC), tendered for filing revisions to its W-2A Tariff, "Partial Requirements Service to Interconnected Utility Customers" (the Tariff). The purpose of this filing is to terminate the option to provide bundled service under the Tariff. WPSC will continue to offer unbundled partial requirements service under the Tariff. WPSC requests that the Commission make the Tariff revisions effective on September 1, 2001.

Copies of the filing were served upon the WPSC's customers under the Tariff, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **11. Commonwealth Edison Company; Commonwealth Edison Company of Indiana**

[Docket No. ER01-2992-000]

Take notice that on August 31, 2001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd) tendered for filing its rates which set forth ComEd's costs of providing transmission and scheduling services to the Alliance Regional Transmission Organization (Alliance RTO). ComEd requests an effective date of the later of December 15, 2001, the date the

Alliance RTO intends to commence operations, or the actual date on which the Alliance RTO commences operations.

Copies of the filing were served upon ComEd's jurisdictional customers, Alliance RTO Companies, and upon the affected state commissions.

#### **12. Virginia Electric and Power Company**

[Docket No. ER01-2993-000]

Take notice that on August 31, 2001, Virginia Electric and Power Company, doing business as Dominion Virginia Power (Dominion Virginia Power or the Company), tendered for filing its proposed rates for transmission service and certain ancillary services within the Dominion Virginia Power pricing zone of the Alliance Regional Transmission Organization (Alliance RTO). Dominion Virginia power requests that these rates take effect on the date on which the Alliance RTO Open Access Transmission Tariff (OATT) takes effect, which is expected to be December 15, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers, all wholesale requirements customers of the Company and the Virginia State Corporation Commission and the North Carolina Utilities Commission; and a list of recipients of this transmittal letter, which includes all customers who have executed service agreements under the Company's OATT.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **13. Arizona Public Service Company; El Paso Electric Company; Public Service Company of New Mexico; Southern California Edison Company**

[Docket No. ER01-2994-000]

Take notice that on August 31, 2001, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico, and Southern California Edison Company (collectively, the ANPP Switchyard Jurisdictional Participants), each tendered for filing with the Federal Energy Regulatory Commission (Commission) an ANPP Hassayampa Switchyard Interconnection Agreement for each of Duke Energy Arlington Valley, LLC, Pinnacle West Energy Corporation, Mesquite Power, LLC, Harquahala Generating Company, LLC, and Gila Bend Power Partners, LLC.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **14. American Electric Power Corporation On behalf of: Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company**

[Docket No. ER01-2995-000]

Take notice that on August 31, 2001, American Electric Power Service Corporation, on behalf of Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (collectively AEP) filed with the Federal Energy Regulatory Commission (Commission) proposed changes for electric transmission rates.

AEPSC requests an effective date of December 15, 2001 or the Transmission Service Date of the Alliance RTO, whichever is later.

Copies of the transmittal letter to AEP's filing have been served upon AEP's transmission customers and copies of the complete filing have been served on the public service commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### **15. Wisconsin Electric Power Company**

[Docket No. ER01-2996-000]

Take notice that on August 31, 2001, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing with the Federal Energy Regulatory Commission (Commission or FERC), a fully executed Second Revised Power Sale Agreement, designated as Second Revised Rate Schedule FERC No. 90, between Wisconsin Electric and Wisconsin Public Power Inc. The changes to the Revised Power Sales Agreement include: increasing the future power supply commitments under the agreement, setting the charged rates for a five-year period, establishing a rate structure for a period following the five-year period and extending the term of the agreement.

Copies of the filing have been sent to Wisconsin Public Power Inc., the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

#### **16. The Dayton Power and Light Company**

[Docket No. ER01-2997-000]

Take notice that on August 31, 2001, The Dayton Power and Light Company

(Dayton) submitted a filing with the Federal Energy Regulatory Commission (Commission or FERC), in support of new rates for jurisdictional transmission and ancillary services. Dayton states that the filing is made for the purposes of implementing in relevant part the Commission's orders on the Alliance Regional Transmission Organization (ARTO) and effecting the transition from the provision of services by Dayton using its own facilities under its Open Access Transmission Tariff (Tariff) (designated by the Commission as Dayton's FERC Electric Tariff, Original Volume No. 5) to the provision of new services on a regional basis by the ARTO. Dayton states that the filing provides the Dayton-specific cost of service and other data that support in relevant part the rates for service under the ARTO tariff being filed concurrently with Dayton's filing. Dayton states that a copy of this filing has been served on all customers under its current Tariff and the Public Utilities Commission of Ohio.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### 17. Illinois Power Company

[Docket No. ER01-2999-000]

Take notice that on August 31, 2001, Illinois Power Company (Illinois Power) tendered for filing with the Federal Energy Regulatory Commission (Commission), proposed rate changes for wholesale electric transmission rates. The proposed changes seek to recover a total of \$38.3 million in revenue in 2001, a 54.8 percent increase in revenues from jurisdictional sales and service based on the 12-month period ending December 31, 2000, as compared to current rates under Illinois Power's open access transmission tariff (OATT).

In order to meet the Alliance Regional Transmission Organization's (Alliance RTO) proposed operational date of on or about December 15, 2001, the transmission owners participating in the Alliance RTO (Alliance Companies), including Illinois Power, are submitting contemporaneously with this filing, a Section 205 filing to establish the transmission rates for the Alliance RTO. In that filing, the Alliance Companies are submitting the rates to be charged under the approved non-pancaked rate structure that provides for zonal rates for loads in the zone, and a single regional through and out rate.

Copies of the filing were served upon all affected customers under Illinois Power's OATT and upon the Illinois Commerce Commission.

*Comment date:* September 21, 2001, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-22868 Filed 9-11-01; 8:45 am]

**BILLING CODE 6717-01-P**

### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

#### Notice of Site Visit; Notice of Scoping Period

September 6, 2001.

Take notice that on October 11, 2001, the Commission staff will visit the Hailesboro #4 Hydroelectric Project No. 6058, to view the project area.

a. *Type of Application:* New Minor License.

b. *Project No.:* P-6058-005.

c. *Date Filed:* January 2, 2001.

d. *Applicant:* Hydro Development Group, Inc.

e. *Name of Project:* Hailesboro #4.

f. *Location:* On the Oswegatchie River in St. Lawrence County, near the Town of Gouverneur, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Kevin M. Webb, Hydro Development Group, Inc., 200

Bulfinch Drive, Andover, MA 01810, (978) 681-1900 ext. 1214.

i. *FERC Contact:* Charles T. Raabe (202) 219-2811 or E-mail address at [Charles.Raabe@FERC.fed.us](mailto:Charles.Raabe@FERC.fed.us).

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (<http://www.ferc.gov>) under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing, operating Hailesboro #4 Project consists of: (1) A concrete gravity-type dam comprising: (i) the 92-foot-long, 14-foot-high Dam #1 surmounted by a pneumatic gate; and (ii) the 58-foot-long, 5-foot-high Dam #2 surmounted by flashboards; (2) a reservoir with a 2.0-acre surface area and a gross storage volume of 20 acre-feet at normal water surface elevation 461 feet NGVD; (3) a gated intake structure with trashracks; (4) a 170-foot-long concrete-lined forebay canal; (5) a powerhouse containing a 640-kW generating unit and an 850-kW generating unit for a total installed capacity of 1,490 kW; (6) a 2.4/23-kV substation; (7) a 50-foot-long, 23-kV transmission line; (8) a tailrace; and (9) appurtenant facilities. The applicant estimates that the total average annual generation would be 11.0 MWh. All generated power is sold to Niagara Mohawk Power Corporation.

l. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A-1, Washington, DC 20426, or by calling (202) 208-2326. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for

inspection and reproduction at the Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681-1900 ext. 1214.

m. *Status of the Application and Environmental Analysis*: This application has been accepted for filing, but it is not ready for environmental analysis.

n. *Site visit*: On October 11, the participants will meet at 9:00 a.m. at the Halesboro #4 powerhouse. Those interested in participating should contact Mr. Kevin Webb at (978) 681-1900 ext. 1214 in advance. Participants should provide their own transportation for the site visit. Further, for the October 11 site visit, participants should bring their own lunches, water, and boots.

o. *Scoping*: Scoping Document 1 has been mailed. It provides information on the Halesboro #4 and Fowler #7 Projects, the environmental analysis process we will follow to prepare the EA, and our preliminary identification of issues that we will address in the EA. Comments and suggestions on the issues we have identified are encouraged and should be filed by the deadline identified in paragraph (j) above.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-22899 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Site Visit; Notice of Scoping Period

September 6, 2001.

Take notice that on October 11, 2001, the Commission staff will visit the Fowler #7 Hydroelectric Project No. 6059, to view the project area.

a. *Type of Application*: New Minor License.

b. *Project No.*: P-6059-006.

c. *Date Filed*: January 2, 2001.

d. *Applicant*: Hydro Development Group, Inc.

e. *Name of Project*: Fowler #7.

f. *Location*: On the Oswegatchie River in St. Lawrence County, near the town of Gouverneur, New York.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Kevin M. Webb, Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681-1900 ext. 1214.

i. *FERC Contact*: Charles T. Raabe (202) 219-2811 or e-mail address at [Charles.Raabe@FERC.fed.us](mailto:Charles.Raabe@FERC.fed.us).

j. *Deadline Date*: 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The existing, operating Fowler #7 Project consists of: (1) A concrete gravity-type dam surmounted by flashboards comprising: (i) the 75-foot-long, 25-foot-high Dam #1; (ii) the 192-foot-long, 20-foot-high Dam #2; and (iii) the 154-foot-long, 15-foot-high Dam #3; (2) a reservoir with a 3.0-acre surface area and a gross storage volume of 30-acre-feet at normal water surface elevation 542 feet NGVD; (3) an intake structure with trashracks; (4) a powerhouse containing three, 300-kW generating units for a total installed capacity of 900-kW; (5) a 1,000-kVA 2.3/23-kV transformer; (6) a 4,000-foot-long, 23-kV overhead transmission line; (7) a tailrace; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be 6.0 MWh. All generated power is sold to Niagara Mohawk Power Corporation.

l. *Locations of the Application*: A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A-1, Washington, DC 20426, or by calling (202) 208-2326. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at <http://www.ferc.gov> using the "RIMS" link, select "Docket#" and follow the instructions (call 202-208-2222 for assistance). A copy is also available for inspection and reproduction at the Hydro Development Group, Inc., 200 Bulfinch Drive, Andover, MA 01810, (978) 681-1900 ext. 1214.

m. *Status of the Application and Environmental Analysis*: This application has been accepted for filing, but it is not ready for environmental analysis.

n. *Site visit*: On October 11, the participants will meet at 9:00 a.m. at the Halesboro #4 powerhouse. Those interested in participating should contact Mr. Kevin Webb at (978) 681-1900 ext. 1214 in advance. Participants should provide their own transportation for the site visit. Further, for the October 11 site visit, participants should bring their own lunches, water, and boots.

o. *Scoping*: Scoping Document 1 has been mailed. It provides information on the Halesboro #4 and Fowler #7 Projects, the environmental analysis process we will follow to prepare the EA, and our preliminary identification of issues that we will address in the EA. Comments and suggestions on the issues we have identified are encouraged and should be filed by the deadline identified in paragraph (j) above.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-22900 Filed 9-11-01; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY**: Environmental Protection Agency.

**ACTION**: Notice of proposed settlement agreement; Request for Public Comment.

**SUMMARY**: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, which was lodged with the United States District Court for the Southern District of New York by the United States Environmental Protection Agency ("EPA") on August 31, 2001, to address a lawsuit filed by the New York Public Interest Research Group ("NYPIRG"). NYPIRG filed a complaint pursuant to section 304(a)(2) of the Act, 42 U.S.C. 7604(a)(2), alleging that EPA had failed to perform an act which is not discretionary. Specifically, NYPIRG alleged that EPA failed to respond to citizen petitions to object to three operating permits within the time provided in section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2). *NYPIRG, Inc. v. Whitman*, No. 00 Civ. 9394 (S.D.N.Y.).

**DATES**: Written comments on the proposed consent decree must be received by October 12, 2001.

**ADDRESSES:** Written comments should be sent to Apple Chapman, Air and Radiations Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed agreement are available from Phyllis J. Cochran, (202) 564-5566.

**SUPPLEMENTARY INFORMATION:** The relevant statutory provisions are as follows. Section 304(a)(2) of the Clean Air Act provides a cause of action and jurisdiction in federal district court "against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator." Title V of the Clean Air Act sets forth an operating permit program for stationary sources of air pollution. Section 505(b)(1) of the Act provides EPA with an opportunity to object to a permit that a state proposes to issue within 45 days after receiving a copy of the proposed permit if EPA determines that the permit is not in compliance with the applicable requirements of the Act. Under section 505(b)(2), if EPA does not object to a permit on its own initiative, citizens may, within 60 days after the expiration of EPA's 45-day review period, petition the Administrator to issue an objection. Section 113(g) of the Act provides that before a consent order or settlement agreement under the Act to which the United States is a party may become final, EPA must provide a reasonable opportunity by notice in the **Federal Register** for persons to comment in writing. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

These are the key facts pertaining to this notice. The New York State Department of Environmental Conservation issued Title V permits to Yeshiva University, Action Packaging Corp., and Kings Plaza. EPA did not object to those permits on its own initiative, and NYPIRG filed citizen petitions requesting that EPA object. Those petitions were filed well over 60 days ago, and to date EPA has not taken final action to grant or deny them. In *NYPIRG, Inc. v. Whitman*, NYPIRG alleges that EPA failed to perform a duty which is not discretionary by not responding to these three petitions within the 60 days provided by statute.

The core of the proposed settlement is the agreement between the parties that

EPA will take final action granting or denying NYPIRG's Yeshiva, Acting Packaging, and Kings Plaza petitions to object by October 340, 2001. The agreement further provides that the parties will request the court to stay its consideration of the case pending implementation of, and subject to, the terms of the agreement. One of those terms provides that NYPIRG may request the court to lift the stay of the litigation if EPA fails to complete the section 113(g) notice and comment process and make the agreement final within 45 days of its execution. In addition, the agreement provides that one it becomes final, the parties will file a joint motion requesting that the court enter the agreement as a consent order.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Settlement Agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Settlement Agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Settlement Agreement will be final.

Dated: September 5, 2001.

Alan W. Eckert,

Associate General Counsel.

[FR Doc. 01-22907 Filed 9-11-01; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-140291; FRL-6798-4]

### Access to Confidential Business Information by Science Applications International Corporation (SAIC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Science Applications International Corporation (SAIC) of Reston, VA access to information which has been submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of the Toxic Substances Control Act (TSCA), and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992. Some of the information may be claimed or determined to be confidential business information (CBI).

**DATES:** Access to the confidential data submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992 occurred as a result of an approved waiver dated July 31, 2001, which requested granting SAIC immediate access to sections 4, 5, 6, 8, 12, and 13 of TSCA CBI, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992.

#### FOR FURTHER INFORMATION CONTACT:

Barbara A. Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epamail.epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

##### II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations" "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgrstr/>.

##### III. What Action Is the Agency Taking?

Under contract number 68-W-99-060, SAIC of 11251 Roger Bacon Drive, Reston, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in performing inspections and collecting documentation from the residential real estate sales and rental industry, that could potentially be subject to TSCA CBI claims.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA

contract number 68-W-99-060, SAIC will require access to CBI submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992 to perform successfully the duties specified under the contract.

SAIC personnel was given access to information submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992. Some of the information may be claimed or determined to be CBI.

Access to the confidential data submitted to EPA under sections 4, 5, 6, 8, 12, and 13 of TSCA, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992 occurred as a result of an approved waiver dated July 31, 2001, which requested granting SAIC immediate access to sections 4, 5, 6, 8, 12, and 13 of TSCA CBI, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992. This waiver was necessary to allow SAIC to assist EPA in performing inspections and collecting documentation from the residential real estate sales and rental industry, that could potentially be subject to TSCA CBI claims.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 8, 12, and 13 of TSCA, and section 1018 of the Residential Lead-Based Paint Reduction Act of 1992, that the Agency will provide SAIC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and at the SAIC site located at 11251 Roger Bacon Drive, Reston, VA. No access will occur at the Reston, VA facility until after it has been approved for the storage of TSCA CBI.

SAIC will be required to adhere to all provisions of EPA's *TSCA Confidential Business Information Security Manual*.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2004.

SAIC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

#### List of Subjects

Environmental protection,  
Confidential business information.

Dated: August 29, 2001.

Allan S. Abramson,

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 01-22759 Filed 9-11-01; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00740; FRL-6801-6]

### FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

**SUMMARY:** There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of issues being considered by the Agency pertaining to the regulatory applicability of the local lymph node assay. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

**DATES:** The meeting will be held on October 22, 2001, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is (703) 486-1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP-00740 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Paul Lewis, Designated Federal Official, Office of Science Coordination and Policy, (7202), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305-5369; fax number: (703) 605-0656; e-mail address: lewis.paul@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), FIFRA, and FQPA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

## II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* A meeting agenda and several background documents relevant to this meeting are now available. EPA's primary position paper and questions to the FIFRA SAP should be available as soon as possible, but no later than late September. In addition, the Agency may provide additional background documents as the materials becomes available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at <http://www.epa.gov/scipoly/sap>. To access this document on the Home Page select **Federal Register** notice announcing this meeting. You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP-00740. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other material information, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. In addition, the Agency may provide additional background documents as the material becomes available. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30

a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

### III. How Can I Request To Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00740 in the subject line on the first page of your request. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advance written request to the person listed under **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc.). There is no limit on the extent of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements at the meeting should contact the person listed under **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your request electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP-00740. You may also file a request online at many Federal Depository Libraries.

### IV. Background

#### A. Purpose of the Meeting

The purpose of this meeting is to seek the SAP's comments on the regulatory applicability of the local lymph node assay (LLNA). The LLNA is a test method for assessing the allergic contact dermatitis (skin sensitization) potential of chemicals and compounds. The assay was found to be scientifically valid by an Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) external peer review as an alternative to traditional guinea pig tests (e.g., Buehler test and Guinea Pig Maximization test). It was also found to provide animal welfare advantages.

In 1996, the SAP gave approval to the incorporation of the LLNA in the Agency's harmonized OPPTS test guidelines (e.g., 870.200 Skin Sensitization) as a screening method. The Agency has now revised its harmonized OPPTS test guidelines to incorporate the LLNA for use as a stand alone method for assessing skin sensitization potential under the appropriate circumstances. These revisions and details of how the LLNA is proposed to fit into both EPA, Office of Pesticide Programs and EPA, Office of Pollution Prevention and Toxics evaluations of skin sensitization will be presented to the SAP for comment.

#### B. Panel Report

The Panel will prepare a report of its recommendations to the Agency in approximately 60 days. The report will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

### List of Subjects

Environmental protection.

Dated: August 31, 2001.

**Vanessa Vu,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 01-22760 Filed 9-11-01;8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-00439K; FRL-6800-4]

### Pesticide Program Dialogue Committee, Inert Disclosure Stakeholder Workgroup; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee (PPDC) on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information (CBI) concerns.

**DATES:** The meeting will be held by conference call on Wednesday, September 26, 2001, from noon to 3 p.m., eastern standard time.

Written public statements, identified by docket control number OPP-00439A, may be submitted before or after the conference call.

**ADDRESSES:** Members of the public may listen to the meeting discussions on site at Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA; conference room 1123. Seating is limited and will be available on a first come first serve basis.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00439A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cameo Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location: 11<sup>th</sup> floor, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA; telephone number: (703) 305-5454; e-mail smoot.cameo@epa.gov.

### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

This action is directed to the public in general and to persons interested in the availability of public information

regarding inert or "other" ingredients in pesticide products regulated under FIFRA.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access general background information about the Inert Disclosure Stakeholder Workgroup, its mission and a list of its members, go to <http://www.epa.gov/pesticides/ppdc/inert/>.

2. *In person.* The Agency has established an administrative record for this workgroup under docket control number OPP-00439A. The administrative record consists of the workgroup documents including discussion papers, meeting agenda, as well as comments submitted to the workgroup by members of the public. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP-00439A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection

Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: [opp-docket@epa.gov](mailto:opp-docket@epa.gov), or you can submit a computer disk as described in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP-00439A. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

The Inert Disclosure Stakeholder Workgroup was established to advise the EPA, through the PPDC, on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under FIFRA. Among the factors the workgroup has been asked to consider in preparing its recommendations are: Existing law regarding inert ingredients and CBI; current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup is composed of participants from the following sectors: Environmental/public interest and consumer groups; industry and pesticide users; Federal, State, and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are also welcome and should be submitted to the OPP Docket. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the Workgroup members for their information. If you have any questions about the workgroup, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects**

Environmental protection, Inerts, Pesticides and pests.

Dated: August 27, 2001.

Anne E. Lindsay,

Acting Director, Office of Pesticide Programs.

[FR Doc. 01-22755 Filed 9-11-01; 8:45 am]

BILLING CODE 6560-50-S

**ENVIRONMENTAL PROTECTION AGENCY**

[OPP-34203I; FRL-6799-7]

**Chlorpyrifos; End-Use Products Cancellation Order**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the use deletions and cancellations as requested by the companies that hold the registrations of pesticide end-use products containing the active ingredient chlorpyrifos and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a June 27, 2001, notice of receipt of requests for amendments to delete uses and receipt of requests for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary use deletions and registration cancellations. Any distribution, sale, or use of canceled chlorpyrifos products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

**DATES:** The cancellations are effective September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (703) 308-8589; fax number: (703) 308-8041; e-mail address: myers.tom@epa.gov.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this Action Apply to Me?*

This action is directed to the public in general. You may be potentially affected by this action if you manufacture, sell, distribute, or use chlorpyrifos products. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C.

804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>. To access information about the risk assessment for chlorpyrifos, go to the Home Page for the Office of Pesticide Programs or go directly <http://www.epa.gov/pesticides/op/chlorpyrifos.htm>.

2. *In person.* The Agency has established an official record for this action under docket control number OPP-34203F. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

**II. Receipt of Requests to Cancel and Amend Registrations to Delete Uses***A. Background*

In a memorandum of agreement ("Agreement") effective June 7, 2000,

EPA and the basic manufacturers of the active ingredient chlorpyrifos agreed to several voluntary measures that will reduce the potential exposure to children associated with chlorpyrifos containing products. EPA initiated the negotiations with registrants after finding chlorpyrifos, as currently registered, was an exposure risk especially to children. As a result of the Agreement, registrants that hold the pesticide registrations of end-use products containing chlorpyrifos (who are in large part the customer of these basic manufacturers) have asked EPA to cancel or amend their registrations for these products. Pursuant to section 6(f)(1) of the FIFRA, EPA announced the Agency's receipt of these requests from the registrants on June 27, 2001 (66 FR 34184) (FRL-6780-6). With respect to the registration amendments, the registrants have asked EPA to amend end-use product registrations to delete the following uses: All termite control uses (these will be phased out); all residential uses (except for ant and roach baits in child resistant packaging (CRP) and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, underground utility cable conduits, and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies). In addition, the companies agreed to limit the maximum chlorpyrifos end-use dilution to 0.5% active ingredient (a.i.) for termiticide uses that will be phased out, limit the maximum label application rate for outdoor non-residential use on golf courses, road medians, and industrial plant sites to 1 lb a.i./per acre, and either classify all new/amended chlorpyrifos products (except baits in CRP) as Restricted Use or package the products in large containers, depending on the formulation type, to ensure that remaining chlorpyrifos products are not available to homeowners. In return, EPA stated that with this Agreement, it had no current intention to initiate any

cancellation or suspension proceedings under section 6(b) or 6(c) of FIFRA with respect to the issues addressed in the Agreement.

In the **Federal Register** notice published on June 27, 2001, EPA published a notice of the Agency's receipt of end-use product amendments and cancellations from registrants that hold the pesticide registrations containing chlorpyrifos (who are in

large part the customer of the basic manufacturers). These requests were submitted as a result of the Memorandum of Agreement that was signed on June 7, 2000, between EPA and the basic manufacturers of chlorpyrifos. A copy of the Memorandum of Agreement that was signed on June 7, 2000, is located in OPP docket control number 34203D.

*B. Requests for Voluntary Cancellation of End-Use Products*

Pursuant to the Agreement and FIFRA section 6(f)(1)(A), several registrants have submitted requests for voluntary cancellation of registrations for their end-use products. The registrations for which cancellations were requested are identified in the following Table 1.

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Company	Registration Number	Product
P.F. Harris Manufacturing Company	3–5	Formula BF–101 (Roach and Ant Killer)
Bonide Products, Inc.	4–207 4–308 4–319 4–320 4–364 4–421	Bonide Dursban 5 Lawn Insect Control Granules Bonide Home Pest Control Bonide Home Pest Control Concentrate Bonide Termite and Carpenter Ant Control Pyrenone Dursban Roach and Ant Spray Dursban
Dexol, a Division of Verdant Brands, Inc.	192–207	Dexol Pest Free Insect Killer
Prentiss Incorporated	655–696 655–792 655–793	Prentox Pyrifos 0.50 RTU Prentox D + 2 Insecticide Prentox Super Brand D + 2 Insecticide
Lebanon Seaboard Corporation	961–261 961–275 961–326	Greenskeeper Chinch Bug Control Lebanon Lawn Food 19–4–4 w/Insect and Grub Control Agrico Country Club Insect Control
NCH Corporation	1769–281 1769–330	Trail-Blazer Dichloran L.O.
Wellmark International	2724–471	Methoprene/Chlorpyrifos Combination Collar for Dogs
Happy Jack, Inc.	2781–20 2781–35 2781–47	Happy Jack Tri-Plex Flea and Mange Collar Happy Jack 3x Flea, Tick and Mange Collar for Cats Sardex
PIC Corporation	3095–46 3095–54 3095–64	PIC Roach, Ant and Spider Killer #2 PIC Pest Control PIC Roach Control III
Combe, Incorporated	4306–16	Sulfodene Scratchex Flea and Tick Collar for Cats
J.C. Ehrlich Chemical Company, Inc.	4704–41	Roach and Ant Killer #2
Hub States, LLC	5602–204	Hub States Residual Crack/Crevise
Voluntary Purchasing Group	7401–293 7401–294 7401–296 7401–313 7401–314 7401–347 7401–350 7401–364 7401–371 7401–416 7401–417 7401–419 7401–423 7401–448	Hi-Yield Special Kill-A-Bug Lawn Granules Hi-Yield Dursban Spray Hi-Yield Mole Cricket Bait Containing Dursban Ferti-Lome Spider Spray Ferti-Lome Flea and Tick Spray Hi-Yield Dursban Garden Dust Hi-Yield Borer Killer Containing Dursban Ferti-Lome Fire Ant Killer Improved Ferti-lome Cricket and Grasshopper Bait Hi-Yield Termite and Soil Insect Killer Hi-Yield Ready to Use Flea and Tick Killer Hi-Yield Mole Cricket Killer Hi-Yield Kill-A-Bug Lawn Granules Dursban-1E Insect Control
Spectrum Group, Division of United Industries Corp.	8845–21 8845–30 8845–31	Rid-A-Bug Home Insect Killer Brand AZ5 Rid-A-Bug Concentrate Brand DD7–2 Home Insect Killer Rid-A-Bug Flea and Tick Brand TF–5 Killer
Theochem Laboratories, Inc.	9367–29	Aqua-Sect Water Base Insecticide

TABLE 1.—END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Company	Registration Number	Product
Waterbury Companies Inc.	9444-90 9444-93 9444-103	CB Aqueous Crack and Crevice Insecticide Dursban Crack and Crevice Insecticide CB Flea and Tick Spray
Chemisco, Division of United Industries Corp.	9688-42 9688-47 9688-62 9688-75 9688-88 9688-95 9688-96	Chemisco Ant and Roach Killer A Ant and Roach Killer IV Chemisco Wasp and Hornet Killer IV Chemisco Microencapsulated Ant and Roach Killer Chemisco Lawn and Garden Granules Chemisco Insect Control Concentrate A Chemisco Insect Control Concentrate B
Lesco, Inc.	10404-30	Lesco Lawn and Ornamental 4.E Plant Insecticide
Hi-Yield Chemical Company	34911-12 34911-17 34911-18	Hi-Yield Kill-A-Bug Lawn Granules Hi-Yield Kill-A-Bug Hi-Yield Fire Ant Killer
St. Jon Laboratories, Inc.	45087-40	Zema 11 Month Collar for Dogs
Celex, Division of United Industries Corp.	46515-13 46515-51	Super K-Gro Home Pest Insect Control Dursban Insect Spray
Chem-Tech, Ltd.	47000-60	Household Insecticide (with Dursban)
Alljack, Division of United Industries Corp.	49585-16 49585-17 49585-18	Super K Gro Dursban $\frac{1}{2}$ G Granular Insecticide Super K Gro Dursban Grub and Insect Control Super K Gro Mole Cricket Bait
PM Resources, Inc.	67517-28	Roach and Ant Insecticide
Black Flag	69421-31 69421-54	Black Flag Roach Control System Black Flag Liquid Roach and Ant Killer
Health and Environmental Horizons, Ltd.	71076-1	The Sprinklerizer System
OMS Investments, Inc.	71949-1 71949-4 71949-5 71949-6 71949-7 71949-8 71949-9	Ford's Dursban $\frac{1}{2}$ G Ford's Lawn Granules Ford's Roach Bait Ford's Dursban 2.5% G Granular Insecticide Ford's Aquakill Plus Roach Spray Ford's Marine Control Multi Purpose Insecticide Ford's Dursban 1% Dust Insecticide

In the June 27, 2001 **Federal Register** notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day comment period provided under FIFRA section 6(f)(1)(C).

Three public comments were submitted to the docket in response to EPA's request for comments. Two of

these comments focused on the continued use of chlorpyrifos in ant and roach baits in child resistant packaging and the third comment focused on the potential effects of exposure to chlorpyrifos.

*C. Requests for Voluntary Amendments to Delete Uses From the Registrations of End-Use Products*

Pursuant to section 6(f)(1)(A) of FIFRA, several registrants have also

submitted requests to amend their end-use registrations of pesticide products containing chlorpyrifos to delete the aforementioned uses. The registrations for which amendments to delete uses were requested are identified in the following Table 2.

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS

Company	Registration Number	Product
Riverdale Chemical Company	228-161	Riverdale Grub Out Plus Fertilizer
Hub States, LLC	5602-97 5602-151	Di-Tox E Di-Tox Plus
Clark Mosquito Control	8329-26 8329-29	Dursban $\frac{1}{2}$ G Dursban 1% G

TABLE 2.—END-USE PRODUCT REGISTRATION AMENDMENT REQUESTS—Continued

Company	Registration Number	Product
Knox Fertilizer Company, Inc.	8378–42 8378–43 8378–44 8378–46	Dursban 70 with Plant Food Shaw's Dursban 50 with Plant Food Shaw's Dursban 60 with Plant Food Shaw's Dursban 100 Granules
Waterbury Companies, Inc.	9444–184 9444–202	CB Strikeforce I Residual With Dursban Strikeforce II Residual with Dursban
Athea Laboratories, Inc.	10088–84 10088–85 10088–94	Residual Insecticide Surface Insecticide Banish Residual Insect Spray
Howard Fertilizer Company, Inc	35512–27 35512–36	Turf Pride Fertilizer with Dursban Turf Pride with 0.67% Dursban
Harrell's Inc.	52287–5	0.4% Chlorpyrifos Plus Fertilizer
Troy E. Fox and Mariene R. Fox	55773–1	Score Roach Bait

In the June 27, 2001, **Federal Register** notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day comment period provided under FIFRA section 6(f)(1)(C).

### III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 2 are hereby amended to delete the following uses: All post-construction termite control uses, except spot and local treatment (use of such products for spot and local treatment will be prohibited after December 31, 2002 by product labeling); all other termite control uses, effective December 31, 2004 (unless EPA has made a decision prior to that date that preconstruction use may continue); all residential uses (except for ant and roach baits in CRP and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies); all indoor non-residential, non-agricultural uses (except ship holds, industrial plants, manufacturing plants, food processing plants, containerized baits in CRP, and processed wood products treated during the manufacturing process at the manufacturing site or at the mill); all outdoor non-residential, non-agricultural sites (except golf courses, road medians, industrial plant sites, fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and

underground utility cable and conduits; and fire ant mound drenches for public health purposes by licensed applicators and mosquito control for public health purposes by public health agencies). The Agency also orders that the registrations identified in Table 1 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

### IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

1. Distribution or sale by registrants of products bearing other uses.

(i) *Restricted use and package size limitations.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal:

(a) The distribution or sale by registrants of existing stocks of any EC formulation product listed in Table 1 or 2 will not be lawful under FIFRA after September 12, 2001, unless the product is labeled as restricted use.

(b) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled for any agricultural use and that is not an

EC, will not be lawful under FIFRA after September 12, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation, 50 pounds of a granular formulation, or 25 pounds of any other dry formulation.

(c) The distribution or sale by registrants of existing stocks of any product listed in Table 1 or 2 labeled solely for non-agricultural uses (other than containerized baits in CRP) and that is not an EC, will not be lawful under FIFRA after September 12, 2001, unless the product is either labeled for restricted use or packaged in containers no smaller than 15 gallons of a liquid formulation or 25 pounds of a dry formulation.

(ii) *Prohibited uses.* Except for the purposes of returns for relabeling consistent with the June 7, 2000 Memorandum of Agreement, shipping for export consistent with the requirements of section 17 of FIFRA, or proper disposal, the distribution or sale of existing stocks by registrants of any product identified in Table 1 or 2 that bears instructions for any of the following uses will not be lawful under FIFRA after February 1, 2001:

(a) Termite control, unless the product bears directions for use of a maximum 0.5% active ingredient chlorpyrifos end-use dilution.

(b) Post-construction termite control, except for spot and local termite treatment, provided the label of the product states that the product may not be used for spot and local treatment after December 31, 2002.

(c) Indoor residential except for containerized baits in CRP.

(d) Indoor non-residential except for containerized baits in CRP and products with formulations other than EC that bear labeling solely for one or more of

the following uses: Warehouses, ship holds, railroad boxcars, industrial plants, manufacturing plants, food processing plants, or processed wood products treated during the manufacturing process at the manufacturing site or at the mill.

(e) Outdoor residential except for products bearing labeling solely for one or more of the following public health uses: Individual fire ant mound treatment by licensed applicators or mosquito control by public health agencies.

(f) Outdoor non-residential, non-agricultural except for products that bear labeling solely for one or more of the following uses: Golf courses, road medians, and industrial plant sites, provided the maximum label application rate does not exceed 1 lb a.i./per acre; mosquito control for public health purposes by public health agencies; individual fire ant mound treatment for public health purposes by licensed applicators; and fence posts, utility poles, railroad ties, landscape timbers, logs, pallets, wooden containers, poles, posts, processed wood products, manhole covers, and underground utility cable and conduits.

3. *Retail and other distribution or sale.* The retail sale of existing stocks of products listed in Table 1 or 2 bearing instructions for the prohibited uses set forth above in Units IV.1.ii.a. thru f. will not be lawful under FIFRA after December 31, 2001. Except as otherwise provided in this order, any other distribution or sale (for example, return to the manufacturer for relabeling) is permitted until stocks are exhausted.

#### 4. *Final distribution, sale and use date for preconstruction termite control.*

The distribution, sale or use of any product listed in Table 1 or 2 bearing instructions for pre-construction termiticide use will not be lawful under FIFRA after December 31, 2005, unless, prior to that date, EPA has issued a written determination that such use may continue consistent with the requirements of FIFRA.

5. *Use of existing stocks.* Except for products bearing those uses identified above in Units IV.1. and IV.4., EPA intends to permit the use of existing stocks of products listed in Table 1 or 2 until such stocks are exhausted, provided such use is in accordance with the existing labeling of that product.

#### List of Subjects

Environmental protection, Memorandum of Agreement, Pesticides and pests.

Dated: August 29, 2001.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 01-22756 Filed 9-11-01; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[OPP-30122; FRL-6788-8]

### Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application submitted by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, to conditionally register the pesticide product Callisto Herbicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305- 6224; and e-mail address: Miller.Joanne@epa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to

the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at <http://www.epa.gov/pesticides/>, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP-30122. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information

claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305-5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305-5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

## II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of mesotrione, and information on social, economic, and environmental benefits to be

derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of mesotrione during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

## III. Conditionally Approved Registrations

EPA issued a notice published in the **Federal Register** of June 15, 1998 (63 FR 32658) (FRL-5792-6) which announced that Zenaca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850-5458 had submitted an application to register the pesticide product ZA1296 4-SC Herbicide containing [2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione at 40% an active ingredient not included in any previously registered product. Prior to conditional approval of this application, Zenaca Ag Products merged with Norvatis. Zenaca and Norvatis later formed Syngenta. The company file symbol was redesignated and the product name was changed.

The application was conditionally approved on June 4, 2001, for the product listed below:

EPA File Symbol: 100-1131.  
Company name: Syngenta. Product name: Callisto Herbicide. Product type: Herbicide. Active Ingredient: Mesotrione, [2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione. Use: Conditionally registered to control broadleaf weeds in field corn.

## List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 24, 2001.

**Donald R. Stubbs,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 01-22761 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7054-9]

### Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act of 1986; In Re: Elizabeth Mine Superfund Site, Strafford, VT

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed agreement; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, *et. seq.*, as amended, notice is hereby given of a proposed Agreement and Covenant Not to Sue between the United States, on behalf of the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of Interior ("DOI"), the State of Vermont, and the George D. Aiken Resource Conservation and Development Council, Inc ("Purchaser"). The Purchaser plans to acquire 6.33 acres of property that may be contaminated by leach heaps and tailings piles originating from the Elizabeth Mine Superfund Site. The proposed agreement will allow the Purchaser to further its goals of ensuring historical status for the Elizabeth Mine and preserving community access to Site property. In return, the Purchaser agrees to provide an irrevocable right of access to representatives of EPA and DOI and to comply with any Institutional Controls that EPA may require as part of the remediation. In addition, the Purchaser agrees to fully cooperate with any natural resource damage assessment and/or restoration activities conducted by or on behalf of DOI.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at One Congress Street, Boston, MA 02214.

**DATES:** Comments must be submitted on or before October 12, 2001.

**ADDRESSES:** Comments should be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RAA, Boston, Massachusetts 02203, and should refer to: In re: Elizabeth Mine Superfund Site, U.S. EPA Docket No. CERCLA-01-2001-0054.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed Agreement and Covenant Not to Sue can be obtained from Steven Schlang, U.S. Environmental Protection Agency, Region I, One Congress Street, Mailcode SES, Boston, Massachusetts 02214, (617) 918-1773.

Dated: July 25, 2001.

**Ira W. Leighton,**

*Acting Regional Administrator, Region I.*

[FR Doc. 01-22911 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7055-2]

### Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Lewis Terry Residence Site

**AGENCY:** Environmental Protection Agency ("EPA").

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Lewis Terry Residence hazardous waste site at 304 Stephens Street in Lemont, Illinois (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Lewis I. Terry (the "Settling Party").

Under the proposed agreement, the Settling Party will pay \$8,000 to the Hazardous Substances Superfund to resolve EPA's claims against him for response costs incurred by EPA at the Site. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to

this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

**DATES:** Comments on the proposed agreement must be received by EPA on or before October 12, 2001.

**ADDRESSES:** Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604-3590, and should refer to: In the Matter of Lewis Terry Residence Site, Chicago, Illinois, U.S. EPA Docket No. V-W-01C-656.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C-14J, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601-9675.

**Thomas W. Mateer,**

*Acting Director, Superfund Division, Region 5.*

[FR Doc. 01-22913 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7051-2]

### Public Water System Supervision Program Revision for the State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of tentative approval.

**SUMMARY:** Notice is hereby given that the State of Missouri is revising its approved Public Water System Supervision Program. The State of Missouri has adopted drinking water regulations requiring Consumer Confidence Reporting, that correspond to federal regulations published by EPA on August 19, 1998 (63 FR 44512); Administrative Penalty authority, that correspond to federal regulations

published by EPA on April 28, 1998, (63 FR 23361); and variance and exemption requirements. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these State program revisions.

**DATES:** All interested parties may request a public hearing. A request for a public hearing must be submitted by October 12, 2001 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if there is a substantial request, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on October 12, 2001.

Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8 a.m., and 4 p.m., Monday through Friday, at the following office; U.S. Environmental Protection Agency, Region 7, Drinking Water/Ground Water Management Branch, 901 N. Fifth Street, Kansas City, Kansas, 66101.

**FOR FURTHER INFORMATION CONTACT:**

Robert Dunlevy at (913) 551-7798.

*Reference:* The Safe Drinking Water Act as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: July 19, 2001.

**William W. Rice,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 01-22740 Filed 9-11-01; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of

1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011117-028

*Title:* United States/Australasia Interconference and Carrier Discussion Agreement.

**Parties:**

A.P. Moller-Maersk Sealand  
Australia-New Zealand Direct Line  
CMA CGM, S.A.  
Compagnie Marseille Fret  
FESCO Ocean Management Limited  
Hamburg-Sud  
Ocean Star Container Line, A.G.  
P&O Nedlloyd Limited  
United States Australasia Agreement  
Wallenius Wilhelmsen AS

*Synopsis:* The proposed agreement modification clarifies that the agreement parties may charter space among themselves on an ad hoc, emergency, or interim basis. It also adds minimum service levels that will be provided by the parties in the agreement trade.

Dated: September 7, 2001.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 01-22921 Filed 9-11-01; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

*License No.:* 4428NF.

*Name/Address:* A A Shipping LLC, 15675 Hawthorne Blvd., #A, Lawndale, CA 90260.

*Date Reissued:* July 15, 2001.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 01-22923 Filed 9-11-01; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

DW Associates Inc. dba

ABLECARGO.COM, 2445 Morena Blvd., Suite 203, San Diego, CA 92110-4157, Officer: Douglas B. White, President (Qualifying Individual)

LN Navigation (USA), Inc., 1120 Walnut Street, San Gabriel, CA 91776, Officers: Wendy Luong, President (Qualifying Individual) Barry Lam, CFO

KTL International, Inc., 2613 Greenleaf Avenue, Elk Grove Village, IL 60007, Officer: Hyung Sup Kim, President (Qualifying Individual)

Gateway Logistics International Inc., 147-31 176th Street, Jamaica, NY 11434, Officers: Smit Intarapuvassak, President (Qualifying Individual) Ittinan Intarapuvassak, Secretary

### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

ECO Freight International Corporation, 5422 W. Rosecrans Avenue, Hawthorne, CA 90250, Officers: Takaaki Yagi, President (Qualifying Individual) Hiroko Yaki, Director

Dated: September 7, 2001.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 01-22922 Filed 9-11-01; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank

Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 26, 2001.

#### A. Federal Reserve Bank of Boston

(Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *John D. Doherty*, Somerville, Massachusetts; to acquire additional voting shares of Central Bancorp, Inc., Somerville, Massachusetts, and thereby acquire shares of Central Co-Operative Bank, Somerville, Massachusetts.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *William Thomas Robertson, Jr.*, Indianola, Mississippi; to retain voting shares of Planters Holding Company, Indianola, Mississippi, and thereby indirectly retain voting shares of Planters Bank & Trust Company, Indianola, Mississippi.

#### C. Federal Reserve Bank of Kansas City

(Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Joseph D. Freund Irrevocable Trust*, the Duane M. Freund Irrevocable Trust, the Kenneth J. Freund Irrevocable Trust, the Michael R. Freund Irrevocable Trust, all of Aurora, Colorado, and the following individuals who serve as co-trustees of one or more of the trusts: Joseph Freund, Jr., Elizabeth, Colorado, Richard Campbell, Denver, Colorado, Laura Freund Buddington, Denver, Colorado, Scott Freund, Elizabeth, Colorado, Phillip Pasion, Parker, Colorado, Angela Freund Bennett, Denver, Colorado, and Kenneth Freund, Jr., Aurora, Colorado, to retain voting shares of Commerce Bankshares, Inc., Aurora, Colorado, and thereby indirectly retain voting shares of Commerce Bank, Aurora, Colorado.

Board of Governors of the Federal Reserve System, September 6, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01-22816 Filed 9-11-01; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 27, 2001.

**A. Federal Reserve Bank of Kansas City** (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. *Carl J. Sjulín*, Lincoln, Nebraska; as trustee of the Carl J. Sjulín Revocable Trust and trustee of a Voting Trust agreement, to acquire voting shares of West Gate Bancshares, Inc., Lincoln, Nebraska, and thereby indirectly acquire voting shares of West Gate Bank, Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, September 7, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01-22936 Filed 9-11-01; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 5, 2001.

**A. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. *Sun Bancorp, Inc.*, Vineland, New Jersey; to acquire Delaware City Bank, Delaware City, Delaware.

In connection with this application, Applicant has applied to acquire the Delaware City Building and Loan Association, Delaware City, Delaware ("Association"), and engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Association proposes to merge with Sun's existing subsidiary, Sun National Bank, Delaware, Wilmington, Delaware.

**B. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *BB&T Corporation*, Winston-Salem, North Carolina; to merge with Community First Banking Company, Carrollton, Georgia, and thereby indirectly acquire Community First Bank, Carrollton, Georgia.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Overton Financial Corporation*, Overton, Texas and Overton Delaware Corporation, Dover, Delaware; to acquire .93 percent, for a total of 25.3 percent, the voting shares of Longview Financial Corporation, Longview, Texas, and thereby indirectly acquire shares of Longview Bank and Trust, Longview, Texas, and First State Bank, Van, Texas.

Board of Governors of the Federal Reserve System, September 6, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01-22817 Filed 9-11-01; 8:45 am]

**BILLING CODE 6210-01-S**

**FEDERAL RESERVE SYSTEM****Formations of, Acquisitions by, and Mergers of Bank Holding Companies**

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 2001.

**A. Federal Reserve Bank of Atlanta** (Cynthia C. Goodwin, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. *DNB Financial Services, Inc.*, Douglas, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Douglas National Bank, Douglas, Georgia (in organization).

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Union Financial Group, Ltd., Swansea, Illinois, and thereby indirectly acquire Union Bank of Illinois, Swansea, Illinois, and The State Bank of Jerseyville, Jerseyville, Illinois.

Board of Governors of the Federal Reserve System, September 7, 2001.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 01-22937 Filed 9-11-01; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—07/23/2001</b>			
20011905 .....	Hanover Compressor Company	Schlumberger Limited	Production Operators Corporation
20011906 .....	Schlumberger Limited	Hanover Compressor Company	Hanover Compressor Company
20012136 .....	J.W. Childs Equity Partners II, L.P	InSight Health Services Corp	InSight Health Services Corp.
20012141 .....	Roland Duchatelet	LSI Logic Corporation	X-Fab LLC
20012152 .....	J.W. Childs Equity Partners II, L.P	InSight Health Services Holdings Corp	InSight Health Services Holdings Corp.
20012155 .....	General Electric Company	SAFECO Corporation	SAFECO Credit Company, Inc.
<b>Transactions Granted Early Termination—07/25/2001</b>			
20012116 .....	H.J. Heinz Company	Fenway Partners Capital Fund, L.P.	Delimex Holdings, Inc.
20012121 .....	CRH plc	W.R. Bonsal Company	W.R. Bonsal Company
20012138 .....	Tyco International Ltd	Edison International	Edison Select
<b>Transactions Granted Early Termination—07/26/2001</b>			
20012071 .....	DENTSPLY International Inc	E.ON AG	Degussa Dental GmbH & Co. KG
20012145 .....	Nestle' S.A	Dreyer's Grand Ice Cream, Inc	Degussa-Ney Dental, Inc Dryer's Grand Ice Cream, Inc.
<b>Transactions Granted Early Termination—07/27/2001</b>			
20012095 .....	Werner Enterprises	Transplace, Inc	Transplace, Inc.
20012097 .....	Swift Transportation Co., Inc	Transplace, Inc	Transplace, Inc.
20012098 .....	J.B. Hunt Transport Services	Transplace, Inc	Transplace, Inc.
20012113 .....	Cinergy Corp	Duke Energy Corporation	Cadiz Project Company
20012118 .....	Duke Energy Corporation	Cinergy Corp	Madison Project Company
20012126 .....	Kmart Corporation	Kmart Corporation	Duke Energy Vermillion, LLC
20012130 .....	Land O' Lakes, Inc	Purina Mills, Inc	BlueLight.com LLC
20012146 .....	B.N. Bahadur	Jay Alix	Purina Mills, Inc.
20012149 .....	Allied Capital Corporation	SunSource Inc	Peregrine Incorporated
20012169 .....	Sun Life Financial Services of Canada Inc	Liberty Mutual Insurance Company	SunSource Inc.
			Independent Financial Marketing Group
			Keyport Life Insurance Company
			Liberty Securities Corporation
			LSC Insurance Agency of Arizona, Inc.
			LSC Insurance Agency of Nevada, Inc.
			LSC Insurance Agency of New Mexico, Inc.
20012173 .....	Berkshire Fund V, Limited Partnership	Carter Holdings, Inc	Carter Holdings, Inc.
20012181 .....	SAP Aktiengesellschaft Systeme, Anwendungen Producte in der	Commerce One, Inc	Commerce One, Inc.
20012183 .....	Omnicom Group Inc	Marketing Services Group, Inc	Grizzard Communications Group, Inc.
20012184 .....	Barry Diller	National Leisure Group, Inc	National Leisure Group, Inc.
20012185 .....	Amerada Hess Corporation	Triton Energy Limited	Triton Energy Limited
20012187 .....	Dean Vanech	Dean Vanech	Salmon Energy, LLC
20012188 .....	Education Management Corporation	Michael C. Markovitz, Ph.D	Argosy Education Group, Inc.

Trans #	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—07/30/2001</b>			
20011563 .....	W. Galen Weston	Unilever N.V	Bestfoods Baking Co., Inc., Thomas Trademark Holding BV
20012106 .....	Novartis AG	Dr. Reddy's Laboratories Limited	Dr. Reddy's Laboratories Limited
20012142 .....	PRIMEDIA Inc	Emap plc	Emap, Inc.
20012179 .....	Penauille Polyservices, S.A	Deutsche Lufthansa AG	GlobeGround GmbH
<b>Transactions Granted Early Termination—08/01/2001</b>			
20012144 .....	Duke Energy Corporation	Enron Corp	New Albany Power I, L.L.C.
20012150 .....	Technip	Coflexip, S.A	Coflexip, S.A.
20012176 .....	XCare.net, Inc	Healthcare.com Corporation	Healthcare.com Corporation
20012186 .....	Conectiv	Chris D. Galligan, a natural person	Haymoor, LLC
<b>Transactions Granted Early Termination—08/02/2001</b>			
20012143 .....	Barrick Gold Corporation	Homestake Mining Company	Homestake Mining Company
20012170 .....	Sanmina Corporation	Alcatel	Alcatel USA Sourcing, L.P.
<b>Transactions Granted Early Termination—08/03/2001</b>			
20012166 .....	Florida Rock Industries, Inc	Golder, Thoma, Cressey, Rauner Fund IV, L.P	Bama Crushed Corporation BHY Ready Mix, Inc. Bradley Stone & Sand, Inc. Deklab Stone, Inc. Gove Materials Corporation Mulberry Rock Corporation SRM Aggregates, Inc. Emmpak Foods, Inc. Zaffire, Inc.
20012167 .....	Cargill Incorporated	Emmpak Foods, Inc	Emmpak Foods, Inc.
20012192 .....	Centerpoint Broadband Technologies, Inc	Zaffire, Inc	Zaffire, Inc.
20012193 .....	G. Drew Conway	Renaissance Worldwide, Inc	Renaissance Worldwide, Inc.
20012196 .....	CAE Inc	Schreiner Luchtvaart Groep B.V	Schreiner Aviation Training B.V.
20012202 .....	aaiPharma Inc	AstraZeneca plc	AstraZeneca plc
20012217 .....	William B. Turner	Synovus Financial Corp	Synovus Financial Corp.

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01-22855 Filed 9-11-01; 8:45 am]

**BILLING CODE 6750-01-M**

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section

7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans#	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—08/06/2001</b>			
20012163 .....	Madison Dearborn Capital Partners IV, L.P.	Thomas O. Hicks .....	Southwest Sports Television, L.P.
20012197 .....	Atlas Air Worldwide Holdings, Inc	General Electric Company .....	Polar Air Cargo, Inc.
20012199 .....	Kinder Morgan Energy Partners, L.P.	Occidental Petroleum Corporation	Occidental Texas Pipeline, L.P.

Trans#	Acquiring	Acquired	Entities
<b>Transactions Granted Early Termination—08/08/2001</b>			
20010071 .....	Premdor Inc .....	International Paper Company .....	International Paper Investment Corporation; International Paper Masonite Holdings Co., Ltd; International Paper Trademark Company; Masonite Corporation; Pintu Acquisition Company, Inc.
20012161 .....	The Limited, Inc .....	Charming Shoppes, Inc .....	Charming Shoppes, Inc.
20012162 .....	Charming Shoppes, Inc .....	The Limited, Inc .....	LBH, Inc.
20012175 .....	AutoNation, Inc .....	Robert S. Cuillo .....	Luxury Imports of Palm Beach, Inc.; Palm Beach Lincoln, Mercury, Inc.
20012180 .....	S.A. Louis Dreyfus et Cie .....	BNP Paribas .....	Via North America, Inc.
20012194 .....	Affiliated Computer Services, Inc .....	Lockheed Martin Corporation .....	Lockheed Martin IMS Corporation.
20012206 .....	First Horizon Pharmaceutical Corporation.	Sanofi-Synthelabo .....	Sanofi-Synthelabo, Inc.
20012207 .....	Osborne Jay Call .....	Robert J. Welsh .....	Welsh, Inc.
<b>Transactions Granted Early Termination—08/10/2001</b>			
20012148 .....	Blue Cross and Blue Shield of North Carolina.	Novant Health, Inc .....	PARTNERS National Health Plans of North Carolina, Inc.
20012201 .....	Citigroup, Inc .....	DaimlerChrysler AG .....	debris Financial Services, Inc.
20012205 .....	Toyota Motor Corporation .....	Hino Motors, Ltd .....	Hino Motors, Ltd.
20012218 .....	United Business Media plc .....	Roper Starch Worldwide, Inc .....	Roper Starch Worldwide, Inc.
20012219 .....	Cisco Systems, Inc .....	Allegro Systems, Inc .....	Allegro Systems, Inc.
20012224 .....	EQT Northern Europe AG .....	AB Bonnierforetagen .....	Duni AB.
20012227 .....	The Profit Recovery Group International, Inc.	Howard Schultz .....	Howard Schultz & Association International, Inc.
20012228 .....	Howard Schultz .....	The Profit Recovery Group International, Inc.	The Profit Recovery Group International, Inc.
20012229 .....	Calpine Corporation .....	Edison International .....	Gordonsville Energy, L.P.
20012233 .....	Barry Diller .....	Microsoft Corporation .....	Expedia, Inc.
20012237 .....	New York Life Insurance Company.	Thomas A. Morton Family Trust ...	McMorgan & Co.
20012238 .....	Forstmann Little & Co. Equity Partnership—VII, L.P.	McLeodUSA Incorporated .....	McLeodUSA Incorporated.
20012244 .....	Gerald W. Schwartz .....	Lucent Technologies Inc .....	Lucent Technologies Inc.
20012249 .....	Compass Group PLC .....	Voting Trust dated December 10, 1998.	Crothall Services Group.
<b>Transactions Granted Early Termination—08/13/2001</b>			
20011943 .....	First Health Group Corp .....	HCA-The Healthcare Company ...	CCN Managed Care, Inc.
20012198 .....	General Motors Corporation .....	The 1960 Trust .....	Cooper River Funding, Inc.
20012215 .....	Nokia Corporation .....	Amber Networks, Inc .....	Amber Networks, Inc.
<b>Transactions Granted Early Termination—08/14/2001</b>			
20012164 .....	Sonoco Products Company .....	Robert J. Cloud .....	U.S. Paper Mills Corporation.
20012165 .....	Sonoco Products Company .....	Thomas L. Olson .....	U.S. Paper Mills Corporation.
20012213 .....	Conexant Systems, Inc .....	SiRF Holdings, Inc .....	SiRF Holdings, Inc.
20012222 .....	OCM/GFI Power Opportunities Fund, L.P.	Enron Corp .....	UtiliQuest, LLC.
20012223 .....	Cox Enterprises, Inc .....	Cox Enterprises, Inc .....	Manheim Remarketing Limited Partnership.
20012240 .....	The Governor and Company of the Bank of Scotland.	Halifax Group plc .....	Halifax Group plc.
20012241 .....	Halifax Group plc .....	The Governor and Company of the Bank of Scotland.	The Governor and Company of the Bank of Scotland.
20012243 .....	Reuters plc .....	ProTrader Group Limited Partnership.	ProTrader Group Limited Partnership.
20012248 .....	Brinker International, Inc .....	The Sydran Group, LLC .....	Sydran Foods Services III, L.P.
<b>Transactions Granted Early Termination—08/16/2001</b>			
20012236 .....	RSA Security Inc .....	Securant Technologies, Inc .....	Securant Technologies, Inc.
<b>Transactions Granted Early Termination—08/17/2001</b>			
20011962 .....	LSI Logic Corporation .....	Subramonian Shankar .....	American Megatrends, Inc.
20012251 .....	Mitsubishi Chemical Corporation ..	Welfide Corporation .....	Welfide Corporation.

Trans#	Acquiring	Acquired	Entities
20012272 .....	Pegasus Partners II, L.P .....	Golden Books Family Entertainment, Inc., debtor-in-possession.	Golden Books Family Entertainment, Inc., debtor-in-possession.

**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

**Donald S. Clark,**  
Secretary.

[FR Doc. 01-22856 Filed 9-11-01; 8:45 am]

**BILLING CODE 6750-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the U.S. Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS).

*Times and Dates:* 9:00 a.m.—5:30 p.m., September 24, 2001, 9:00 a.m.—4:00 p.m., September 25, 2001.

*Place:* Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

*Status:* Open.

*Purpose:* The National Committee on Vital and Health Statistics is scheduled to meet on September 24–25, 2001. The NCVHS is the Department's statutory public advisory body on health data, statistics, and health information policy. In addition, the Committee advises HHS on the implementation of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of HIPAA. A briefing from the HHS Deputy Chief Information Officer is planned, and GAO staff will brief the Committee on confidentiality practices and issues in record linkage for research purposes.

The Committee is also expected to discuss and take action on recommendations to HHS from the Privacy and Confidentiality Subcommittee relating to the implementation of the HIPAA Health Information Privacy regulation, following a subcommittee public hearing on the subject in August. Subcommittee breakout sessions also are planned.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

**FOR FURTHER INFORMATION CONTACT:**

Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (<http://ncvhs.hhs.gov>) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440-D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690-7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458-4245.

**Note:** In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: September 4, 2001.

**James Scanlon,**

Director, Division of Data Policy.

[FR Doc. 01-22820 Filed 9-11-01; 8:45 am]

**BILLING CODE 4151-05-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-2119-N]

#### Medicare, Medicaid, and CLIA Programs; Continuance of the Approval of the College of American Pathologists as a CLIA Accreditation Organization

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the continuance of the approval of the College of American Pathologists (CAP) as an accreditation organization for laboratories under the Clinical Laboratory Improvement Amendments

of 1988 (CLIA). We found that the accreditation process of this organization provides reasonable assurance that the laboratories accredited by it meet the conditions required by CLIA statute and regulations. Consequently, laboratories that voluntarily become accredited by CAP in lieu of direct Federal oversight and continue to meet CAP requirements would meet the CLIA condition level requirements for laboratories and, therefore, are not subject to routine inspection by State survey agencies to determine their compliance with CLIA requirements. However, they are subject to Federal validation and complaint investigation surveys.

**EFFECTIVE DATE:** This notice is effective for the period September 12, 2001 through September 30, 2007.

**FOR FURTHER INFORMATION CONTACT:** Val Coppola, (410) 786-3531.

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Legislative Authority

On July 31, 1992, we published a final rule in the **Federal Register** (57 FR 33992) that implemented section 353(e)(2) of the Public Health Service Act. Under this rule CMS may approve a private, nonprofit organization to accredit clinical laboratories (that is, an approved accreditation organization) under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) if the organization meets certain requirements. An organization's requirements for accredited laboratories must be equal to, or more stringent than, the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). A laboratory accredited by an approved accreditation organization that meets and continues to meet all of the accreditation organization's requirements would be considered to meet CLIA condition level requirements as if it was inspected against CLIA regulations. The regulations in 42 CFR part 493, subpart E (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specify the requirements an accreditation organization must meet in order to be approved. CMS approves an accreditation organization for a period not to exceed 6 years.

In general, an approved accreditation organization must, among other conditions and requirements:

- Use inspectors qualified to evaluate laboratory performance and agree to inspect laboratories with the frequency determined by CMS.

- Apply standards and criteria that are equal to, or more stringent than, those condition level requirements established by CMS when taken as a whole.

- Provide reasonable assurance that these standards and criteria are continuously met by its accredited laboratories.

- Provide CMS with the name of any laboratory that has had its accreditation denied, suspended, withdrawn, limited, or revoked within 30 days of the action taken.

- Notify CMS in writing at least 30 days before the effective date of any proposed change in its standards.

- Notify the accredited laboratories of CMS's decision to withdraw its approval within 10 days of the withdrawal. A laboratory can be accredited if, among other things, it meets the standards of an approved accreditation organization and authorizes the accreditation body to submit records and other information to CMS as required.

In addition to requiring the promulgation of criteria for approving and withdrawing the approval of an accreditation body, CLIA requires CMS to perform an annual evaluation by inspecting a sufficient number of laboratories accredited by an accreditation organization, as well as, by any other means that CMS determines appropriate.

#### **I. Notice of Continued Approval of CAP as an Accreditation Organization**

In this notice, we approve CAP as an organization that may continue to accredit laboratories for purposes of establishing their compliance with CLIA. The Centers for Disease Control and Prevention and CMS (hereinafter referred to as "we") have examined the CAP application and all subsequent submissions to determine equivalency with the requirements under 42 CFR part 493, subpart E that an accreditation organization must meet to be granted approved status under CLIA. We have determined that CAP has complied with the applicable CLIA requirements and grant CAP approval as an accreditation organization under 42 CFR part 493, subpart E, September 12, 2001 through September 30, 2007, for all specialty and subspecialty areas under CLIA.

As a result of this determination, any laboratory that is accredited by CAP

during this time period for an approved specialty or subspecialty is deemed to meet the applicable CLIA condition level requirements for laboratories found in 42 CFR part 493 and, therefore, is not subject to routine inspection by a State survey agency to determine compliance with CLIA requirements. However, the accredited laboratory is subject to validation and complaint investigation surveys performed by CMS, or any other Federal, State, local public agency, or nonprofit organization under an agreement with the Secretary.

#### **III. Evaluation of CAP**

The following describes the process used to determine that CAP, as a private, nonprofit organization, provides reasonable assurance that the laboratories it accredits will meet the applicable requirements of CLIA.

##### *A. Requirements for Approving an Accreditation Organization Under CLIA*

To determine whether CMS should grant approval to CAP as a private, nonprofit organization for accrediting laboratories under CLIA for all requested specialty, and subspecialty areas of human specimen testing, we conducted a detailed and in-depth comparison of CAP's laboratory requirements to CLIA laboratory requirements. Our evaluation determined whether CAP meets the following requirements:

- Provides reasonable assurance to us that it requires the laboratories it accredits to meet requirements that are equal to, or more stringent than, the CLIA condition level requirements (for the requested specialties and subspecialties) and would therefore, meet the condition level requirements of CLIA if those laboratories had not been granted deemed status, and had been inspected against condition level requirements.

- Meets the applicable requirements of 42 CFR part 493, subpart E.

As specified in the regulations of 42 CFR part 493, subpart E, our review of a private, nonprofit accreditation organization seeking approved status under CLIA, includes, but is not limited to, an evaluation of the following:

- Whether the organization's requirements for its accredited laboratories are equal to, or more stringent than, the condition level requirements of the CLIA regulations.

- The organization's inspection process to determine the:

- Composition of the inspection teams, qualifications of the inspectors, and the ability of the organization to provide continuing education and training to all of its inspectors.

- Comparability of the organization's full inspection and complaint inspection requirements to the Federal requirements including, but not limited to inspection frequency, and the ability to investigate and respond to complaints against its accredited laboratories.

- Organization's procedures for monitoring laboratories that are out of compliance with its requirements.

- Organization's ability to provide CMS with electronic data and reports that are necessary for effective validation and assessment of the organization's inspection process.

- Organization's ability to provide CMS with electronic data related to the adverse actions resulting from unsuccessful proficiency testing (PT) participation in CMS-approved PT programs, as well as, data related to the PT failures, within 30 days of the initiation of the action.

- Ability of the organization to provide CMS with electronic data for all its accredited laboratories, and the areas of specialty and subspecialty testing.

- Adequate numbers of staff and other resources.

- Organization's ability to provide adequate funding for performing the required inspections.

- The organization's agreement with CMS that requires it, among other things, to meet the following requirements:

- Notify CMS of any laboratory that has had its accreditation denied, limited, suspended, withdrawn, or revoked by the accreditation organization, or any other adverse action taken against it by the accreditation organization within 30 days of such action.

- Notify CMS within 10 days of a deficiency identified in an accredited laboratory if the deficiency poses an immediate jeopardy to the patients of the laboratory or a hazard to the general public.

- Notify CMS of all newly accredited laboratories, or laboratories whose areas of specialty or subspecialty are revised, within 30 days.

- Notify each laboratory accredited by the organization within 10 days of CMS's withdrawal of approval of the organization as an accreditation organization.

- Provide CMS with inspection schedules as requested, for the purpose of conducting onsite validation inspections.

- Provide our agent, the State survey agency, or CMS with any facility-specific data that includes, but is not limited to, PT results that constitute unsuccessful participation in an approved PT program and notification

of the adverse actions or corrective actions imposed by the accreditation organization as a result of unsuccessful PT participation.

—Provide CMS with written notification at least 30 days in advance of the effective date of any proposed changes in its requirements.

—Provide upon the request by anyone, on a reasonable basis (and subject to applicable State law concerning disclosure of confidential information), any laboratory's PT results with the explanatory information needed to assist in the interpretation of the results.

Laboratories that are accredited by an approved accreditation organization, among other things must comply with the following requirements:

- Authorize the organization to release to CMS all records and information required.
- Permit inspections as required by the CLIA regulations at 42 CFR part 493, subpart Q (Inspection).
- Obtain a certificate of accreditation as required by § 493.55 (Application for registration certificate and certificate of accreditation).

#### *B. Evaluation of the CAP Request for Continued Approval as an Accreditation Organization Under CLIA*

CMS has examined CAP's assurance that it requires the laboratories it accredits to be, and that the organization is in compliance with the following subparts of part 493:

##### **1. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program**

CAP has requested continued approval to accredit all specialties and subspecialties, and has submitted the following:

- Description of its inspection process, policies, PT monitoring process, and data management and analysis system.
- List of its inspection team size, composition, and education and experience.
- Investigative and complaint response procedures.
- CMS's notification agreements.
- Procedures for the removal or withdrawal of accreditation from a laboratory.
- Current list of accredited laboratories with announced or unannounced inspection process.

We have determined that CAP has complied with the requirements under CLIA for approval as an accreditation organization under this subpart.

Our evaluation identified areas of the CAP requirements that are more

stringent than the CLIA requirements and apply to the laboratory as a whole. Rather than include them in the appropriate subparts multiple times, we list them here:

- CAP requires the directors of its accredited laboratories to sign an attestation that their laboratory(ies) are in compliance with all applicable Federal, State, and local laws.

- CAP lists extensive requirements for the Laboratory Information System (LIS) that include but, are not limited to the following areas:

—Preservation, storage, and retrieval of laboratory and patient data.

—Review of LIS programs for appropriate content and testing before use, when a new program is to be put in place, or when changes are made to existing programming.

—Maintenance of the LIS facility (must be clean, well ventilated, and at proper temperature and humidity).

—Protection of LIS against power interruptions and surges.

—Readily available procedure manuals for LIS operators, adequately trained operators that know how to preserve data and equipment in emergency situations (for example, fire, software or hardware failure).

—Protection of the LIS, its data, patient information, and programs from unauthorized use.

—Entry of data and result reporting.

—Verification and maintenance of LIS hardware and software.

—Routine and emergency service and maintenance of the LIS.

—Evaluation from the laboratory director of the LIS performance as it pertains to patient and clinician needs.

- CAP accredits laboratories that perform testing for any of the following areas and sets specific standards with which accredited laboratories must comply:

—Athletic drug testing (for anabolic steroids, beta-blockers, cannabinoids, narcotics, and stimulants).

—Forensic urine drug testing.

—Parentage testing.

—Reproductive laboratory testing (embryology).

##### **2. Subpart H—Participation in Proficiency Testing for Laboratories Performing Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests**

The CAP requirements for PT are in conformance with the CLIA statute that states the standards accreditation organizations must require all laboratories be tested by PT for each examination for which PT is available. The CAP PT requirements are more

stringent than the CLIA regulations in Subpart I that lists specific tests in which the laboratory must enroll and participate in a CMS-approved PT program. CLIA exempts waived testing from PT, whereas CAP requires its accredited laboratories to participate in a CMS-approved PT program for all testing, including procedures waived under CLIA.

We have determined that the actions taken by CAP to correct unsatisfactory (one failure) PT performance are equivalent to those of CLIA and that the actions taken to correct unsuccessful (2 in a row or 2 out of 3 failures) PT performance of its laboratories are more stringent than those of CLIA. CAP utilizes an on-going electronic monitoring process that flags both unsatisfactory and unsuccessful results for all PT performance, both CLIA required analytes and all other testing for which PT is available and is required by CAP.

CAP accredited laboratories are allowed 15 days to respond in writing to each unsatisfactory result. The response must indicate how the problem was investigated, the cause of the problem, the specific corrective action that was taken to prevent recurrence, and evidence that the problem was successfully corrected. CLIA regulations state that the laboratory must undertake appropriate training and employ the technical assistance that is necessary to correct problems associated with an unsatisfactory score, take remedial action, and document all steps taken.

Unsuccessful PT performance, when identified by CAP, initiates immediate communication with the laboratory director. A written response must be submitted to CAP, explaining why the adverse results occurred, a description of the problem, and the actions taken to correct the problem. The laboratory must submit this information within 10 working days. If, after review by CAP, it is determined that the laboratory's subsequent PT performance is within acceptable limits, no further action is taken. If the laboratory does not respond, fails to seriously address the problem, or cannot bring performance into acceptable limits, the CAP would evaluate the situation and either request that the laboratory cease testing for the analyte, specialty, or subspecialty in question, or, if warranted, revoke accreditation.

CLIA regulations allow a laboratory to undertake training of its personnel or to obtain technical assistance or both, when the initial unsuccessful PT performance occurs instead of imposing alternative or principal sanctions.

CAP also requires its accredited laboratories performing GYN cytology to participate in its external quality assurance program for PAP smear cytology. The Interlaboratory Comparison Program in Cervicovaginal Cytopathology currently enrolls all of CAP's 2,793 accredited laboratories that perform GYN cytology. This program is a cervicovaginal cytopathology proficiency testing survey, in which all CAP accredited laboratories are required to participate. Currently there is no CMS-approved cytology PT program capable of enrolling all CLIA certified laboratories that perform GYN cytology testing.

**3. Subpart J—Patient Test Management for Moderate Complexity (Including the Subcategory), High Complexity or Any Combination of These Tests**

The CAP requirements are equivalent to the CLIA requirements at §§ 493.1101 through 493.1111. We have determined that CAP's requirements for an accredited laboratory include on report forms the dates and times of specimen collection (when appropriate), is more stringent than the requirements under CLIA.

**4. Subpart K—Quality Control for Tests of Moderate Complexity (Including the Subcategory), High Complexity, or Any Combination of These Tests**

The quality control (QC) requirements of CAP have been evaluated against the phased-in, complexity based requirements of the CLIA regulations. We have determined that the QC requirements of CAP are more stringent than the CLIA requirements, when taken as a whole. Some specific areas of QC that are more stringent are as follows:

- The CAP laboratory safety requirements are specific and detailed.
- Environmental safety requirements address electrical voltage, facility ventilation, lighting, temperature, humidity, emergency power source, and require remedial actions to be taken when necessary.

- Requirements are in place for handling and disposal of biohazardous materials, fire safety and prevention of fire hazards, and OSHA regulations related to laboratories.

- The CAP requires procedure manuals to include the principal and clinical significance for each test, and their procedure manuals must include documentation of initial and annual reviews.

- CLIA regulations allow cytology slide preparations made using automated, semi-automated, or other liquid-based slide preparations that cover half or less of a slide to be

counted as one half slide for cytology workload purposes. This allows a maximum of 200 preparations to be examined by an individual in a 24-hour period. The CAP does not recognize these preparations as half slides, but rather as full slides to be included in an individual's 100 slide, 24-hour maximum allowable workload.

- CAP requires its accredited laboratories to use the appropriate reagent grade water for the testing performed, stating which type of water (from type I through type III) must be used in specific tests. Source water also must be evaluated for silicone levels.

- CAP accredited laboratories must verify all volumetric glassware and pipettes for accuracy and reproductibility before use, and must recheck them periodically. These activities must be documented.

- CAP accredited laboratories that perform maternal serum alpha-fetoprotein, and amniotic fluid alpha-fetoprotein have specific requirements that must be met. These include a qualitative specimen evaluation, requesting and reporting information necessary for interpretation of results, for example, gestational age, maternal birth date, race, maternal weight, insulin-dependent diabetes mellitus, multiple gestations, median ranges calculated and recalculated yearly, results reported in multiples of the mean.

- The CAP lists specific requirements for newer methodologies. Molecular pathology and flow cytometry standards are presented in separate checklists and immunohistochemistry has specific requirements within histology.

- CAP retention requirements are the same or longer than those of CLIA.

**5. Subpart M—Personnel for Moderate and High Complexity (Including the Subcategory) and High Complexity Testing**

The Standards for Laboratory Accreditation of the CAP states at Standard I, Director and Personnel Requirements (under item D, Personnel), that all laboratory personnel must be in compliance with applicable Federal, State, and local laws and regulations. This standard is implemented in the general laboratory requirement that there must be evidence in personnel records that all testing personnel have been evaluated against CLIA regulatory requirements for high complexity testing, and that all individuals qualify. CAP holds all technical personnel in its accredited laboratories to the CLIA high complexity personnel requirements. Therefore, we have determined that the

personnel requirements of the CAP are more stringent than the personnel requirements of CLIA, when taken as a whole.

**6. Subpart P—Quality Assurance for Moderate Complexity (Including the Subcategory) or High Complexity Testing, or Any Combination of These Tests**

We have determined that CAP's requirements are equal to, or more stringent than, the CLIA requirements of this subpart. CAP also offers an educational program (Q-Probes) to its accredited laboratories, that provides further information on quality assurance to the large, full service laboratories, that allows peer review and comparisons between facilities.

**7. Subpart Q—Inspection**

We have determined that the CAP inspection requirements, taken as a whole, are equivalent to the CLIA inspection requirements. CAP has continued its Laboratory Accreditation Programs Inspection Training Seminars program. In the year 2000, there were 8 regional training programs held (hosting 747 participants) and 13 national training programs (hosting 433 participants) with 12 ad hoc training sessions presentations. In addition, 4 audio training conferences were held in which 6,351 inspection team leaders and team members participated.

The CAP will continue its policy of biennial on-site announced inspections. An unannounced inspection would be performed when a complaint, lodged against a CAP accredited laboratory, indicates that problems exist within that laboratory that are likely to have serious and immediate effects on patient care.

CAP requires a mid-cycle self-inspection of all accredited laboratories. All requirements for the mid-cycle self-inspection must be responded to in writing, and the responses must be submitted to CAP within a specified timeframe. CLIA regulations do not have this requirement.

**8. Subpart R—Enforcement Procedures**

CAP meets the requirements of Subpart R to the extent that it applies to accreditation organizations. CAP policy stipulates the actions it takes when laboratories it accredits do not comply with its requirements and standards for accreditation. As demonstrated during its first period of approval, CAP denies accreditation to a laboratory when appropriate, and reports the denial to CMS within 30 days. CAP also provides an appeal process for laboratories that have had accreditation denied.

Some specific actions CAP takes in response to non-compliance or violation of its requirements or standards for accreditation include:

- When an accredited laboratory is identified as having intentionally referred a PT specimen to another laboratory for analysis, the CAP laboratory will be denied accreditation and be ineligible for CAP accreditation for 1 year. This action is similar to the CMS action of denial of certification for 1 year.

- When a CAP accredited laboratory participates unsuccessfully in PT for an analyte, subspecialty, or specialty, the laboratory must initiate corrective actions. The laboratory must submit to CAP documentation of a detailed investigation of the problem causing the unsuccessful performance with a corrective action plan within 10 working days. Specific educational activity or the retention of the services of a consultant may be imposed. Failure to bring PT performance into acceptable limits or failure to seriously address the PT problem would cause CAP to request the laboratory to cease testing for the procedure(s) in question or, if warranted, revoke the laboratory's accreditation. This action is equivalent to the actions that CMS may take under this section.

- When CAP becomes aware of a problem in an accredited laboratory that is so severe and extensive that it could cause a serious risk of harm (immediate jeopardy) situation, an expedited evaluation is immediately undertaken by the Chair and Vice Chair of the Accreditation Committee, the Regional Commissioner and the Director of the Laboratory Accreditation Program. If it is determined that an immediate jeopardy situation exists, the laboratory is required to remove the jeopardy situation immediately or accreditation would be revoked. An on-site focused re-inspection may be performed to verify that the immediate jeopardy no longer exists. These actions are similar to CMS actions for immediate jeopardy.

- The CAP requires its accredited laboratories to correct all deficiencies within 30 days. CLIA deficiencies that are not condition level must be corrected in a timeframe that is acceptable to CMS, but no longer than 12 months. CLIA deficiencies that are condition level that are not considered immediate jeopardy must be corrected in an acceptable timeframe; however, CMS may impose one or more alternate sanctions or a principal sanction to motivate laboratories to correct these deficiencies. The CAP timeframe for correction of deficiencies, when taken as a whole, is more stringent than CLIA.

We have determined that CAP's laboratory enforcement and policies are equivalent to the requirements of this subpart as they apply to accreditation organizations.

#### IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of CAP accredited laboratories may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (complaint inspections). The outcome of those validation inspections, performed by our agent, the State survey agency, or us, will be CMS's principal means for verifying that the laboratories accredited by CAP remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

#### V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may remove the approval of an accreditation organization (for example, CAP) for cause, before the end of the effective date of approval. If validation inspection outcomes, and the comparability, or validation review produce findings as described in § 493.573 (Continuing Federal oversight of private nonprofit accreditation organizations and approved State licensure program), CMS will conduct a review of an approved accreditation organization's program. In addition, we will conduct a review, when the validation review findings, irrespective of the rate of disparity (as defined in § 493.2), indicate systematic problems in the organization's processes that provide evidence that the organization's requirements, taken as a whole, are no longer equivalent to the CLIA requirements, taken as a whole.

If CMS determines that CAP has failed to adopt or maintain requirements that are equal to, or more stringent than, the CLIA requirements, or systematic problems exist, CMS may give a probationary period, not to exceed 1 year, to CAP to adopt equal, or more stringent requirements. CMS will determine whether CAP retains its approved status as an accreditation organization under CLIA. If approved status is withdrawn, an accreditation organization such as CAP may resubmit its application to CMS if it revises its program to address the rationale for the denial, demonstrates that it can reasonably assure that its accredited laboratories meet CLIA condition level requirements, and resubmits its application for approval as an accreditation organization in its entirety. However, if an approved

accreditation organization requests reconsideration of an adverse determination in accordance with subpart D (Reconsideration of Adverse Determinations—Deeming Authority for Accreditation Organizations and CLIA Exemption of Laboratories Under State Programs) of part 488 (Survey, Certification, and Enforcement Procedures) of our regulations, it may not submit a new application until CMS issues a final reconsideration determination. If circumstances result in CAP having its approval withdrawn, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

#### Federalism

We have reviewed this notice under the threshold criteria of Executive Order 13132, Federalism, and have determined that this notice will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

#### OMB Review

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

**Authority:** Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: July 18, 2001.

**Thomas A. Scully,**  
Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01-22822 Filed 9-11-01; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 62, No. 85, pp. 24120-24126 dated Friday, May 2, 1997) is amended to reflect changes to the organizational structure of CMS by replacing the Center for Beneficiary Services and the Center for Health Plans and Providers with the Center for Beneficiary Choices and the Center for Medicare Management. Also, it transfers managed care audit responsibility from the Office of Financial Management to the Center for Beneficiary Choices, and

also transfers the Quality Measurement and Health Assessment Group from the Office of Clinical Standards and Quality to the Center for Beneficiary Choices.

The specific amendments to part F are described below:

- Section F.10. (Organization) is amended to read as follows:

1. Press Office (FAC)
2. Center for Beneficiary Choices (FAE)
3. Office of Legislation (FAF)
4. Center for Medicare Management (FAH)
5. Office of Equal Opportunity and Civil Rights (FAJ)
6. Office of Strategic Planning (FAK)
7. Office of Communications and Operations Support (FAL)
8. Office of Clinical Standards and Quality (FAM)
9. Office of the Actuary (FAN)
10. Center for Medicaid and State Operations (FAS)
11. Northeastern Consortium (FAU)
12. Southern Consortium (FAV)
13. Midwestern Consortium (FAW)
14. Western Consortium (FAX)
15. Office of Internal Customer Support (FBA)
16. Office of Information Services (FBB)
17. Office of Financial Management (FBC)

- Section F.20. (Functions) is amended by deleting the functional statements in their entirety for the Center for Beneficiary Services, Center for Health Plans and Providers, and the Quality Measurement and Health Assessment Group within the Office of Clinical Standards and Quality. The new functional statements read as follows:

## **2. Center for Beneficiary Choices (FAE)**

- Serves as the focal point for all Agency interactions with beneficiaries, their families, care givers, health care providers, and others operating on their behalf concerning improving beneficiary ability to make informed decisions about their health and about program benefits administered by the Agency. These activities include strategic and implementation planning, execution, assessment, and communications.

- Assesses beneficiary and other consumer needs, develops and oversees activities targeted to meet these needs, and documents and disseminates results of these activities. These activities focus on Agency beneficiary service goals and objectives and include: development of baseline and ongoing monitoring information concerning populations affected by Agency programs; development of performance measures and assessment programs; design and implementation of beneficiary services

initiatives; development of communications channels and feedback mechanisms within the Agency and between the Agency and its beneficiaries and their representatives; and close collaboration with other Federal and state agencies and other stakeholders with a shared interest in better serving our beneficiaries.

- Develops national policy for all Medicare Parts A, B, and C beneficiary eligibility, enrollment, and entitlement; rights and protections; dispute resolution process; as well as policy for managed care enrollment and disenrollment to ensure the effective administration of the Medicare program, including the development of related legislative proposals.

- Oversees the development of privacy and confidentiality policies pertaining to the collection, use, and release of individually identifiable data.

- Coordinates beneficiary centered information, education, and service initiatives.

- Develops and tests new and innovative methods to improve beneficiary aspects of health care delivery systems through Title XVIII, XIX, and XXI demonstrations and other creative approaches to meeting the needs of Agency beneficiaries.

- Ensures that, in coordination with other Centers and Offices, the activities of Medicare contractors, including managed care plans, agents, and state agencies, meet the Agency's requirements on matters concerning beneficiaries and other consumers.

- Plans and administers the contracts and grants related to beneficiary and customer service, including the State Health Insurance Assistance Program grants.

- Formulates strategies to advance overall beneficiary communications goals and coordinates the design and publication process for all beneficiary centered information, education, and service initiatives.

- Builds a range of partnerships with other national organizations for effective consumer outreach, awareness, and education efforts in support of Agency programs.

- Serves as the focal point for all Agency interactions with managed health care organizations for issues relating to Agency programs, policy, and operations.

- Develops national policies and procedures related to the development, qualification, and compliance of health maintenance organizations, competitive medical plans and other health care delivery systems and purchasing arrangements (such as prospective pay, case management, differential payment,

selective contracting, etc.) necessary to ensure the effective administration of the Agency's programs, including the development of statutory proposals.

- Handles all phases of contracts with managed health care organizations eligible to provide care to Medicare beneficiaries.

- Coordinates the administration of individual benefits to ensure appropriate focus on long-term care, where applicable, and assumes responsibility for the operational and demonstration efforts related to the payment aspects of long-term care and post-acute care services.

- Designs and conducts payment, purchasing, and benefits demonstrations.

## **4. Center for Medicare Management (FAH)**

- Serves as the focal point for all Agency interactions with health care providers, intermediaries, and carriers for issues relating to Agency fee-for-service (FFS) policies and operations.

- Monitors providers' and other entities' conformance with quality standards (other than those directly related to survey and certification); policies related to scope of benefits; and other statutory, regulatory, and contractual provisions.

- Based on program data, develops payment mechanisms, administrative mechanisms, and regulations to ensure that CMS is purchasing medically necessary services under FFS.

- Writes payment and benefit-related instructions for Medicare contractors.

- Defines the scope of Medicare benefits and develops national FFS payment policies, as necessary, to ensure the effective administration of the Agency's programs, including the development of related statutory proposals.

- Develops Agency medical coding policies related to FFS payments.

- Provides administrative support to the Practicing Physician Advisory Council.

- Coordinates provider, physician, and contractor centered information, education, and service initiatives.

- Serves as the CMS lead for Medicare carrier and fiscal intermediary (FI) management, oversight, budget, and performance issues.

- Functions as CMS liaison for all Medicare carrier and FI program issues and, in close collaboration with the regional offices and other CMS components, coordinates the agency-wide contractor activities.

- Manages contractor instructions, workload, and change management process.

- Collaborates with other CMS components to establish ongoing performance expectations for Medicare contractors (carriers and FIs) consistent with the agency's goals; interprets, evaluates, and provides information on Medicare contractors in terms of ongoing compliance with performance requirements and expectations; evaluates compliance with issued instructions; evaluates contractor-specific performance and/or integrity issues; and evaluates/monitors corrective action, if necessary.

- Manages, monitors, and provides oversight of contractor (carriers and FIs) transition activities including replacement of departing contractors and the resulting transfer of workload, functional realignments, and geographic workload carveouts.

- Maintains and provides accurate contractor specific information.

Develops and implements long-term FFS contractor strategy, tactical plans, and other planning documents.

- Serves as lead on current/proposed legislation in order to determine impact on provider and contractor operations.

- Develops national policy and implementation of all Medicare Part A, Part B, and Part C premium billing and collection activities and coordination of benefits to assure effective administration of FFS aspects of the Medicare program.

Dated: September 6, 2001.

**Thomas A. Scully,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 01-22821 Filed 9-11-01; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Receipt of Applications for Permit

##### Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

*Applicant:* The Dallas World Aquarium, Dallas, TX, PRT-043800.

The applicant requests a permit to import 1.1 captive held giant river otter,

*Pteronura brasiliensis*, currently being held in Venezuela, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

*Applicant:* Edward E. Seager, Bedford, PA, PRT-047589.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Richard M. Welch, Mechanicsville, TX, PRT-047505.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Patrick B. Sands, Dallas, TX, PRT-047504.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018-0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358-2104 or fax 703/358-2281.

Dated: August 31, 2001.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 01-22902 Filed 9-11-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Outer Continental Shelf (OCS), Central and Western Gulf of Mexico, Oil and Gas Lease Sales for Years 2002-2007

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Call for information and nominations, Notice of intent to prepare an environmental impact statement.

**SUMMARY:** MMS proposes to adopt a multisale process for the Central and Western Gulf of Mexico (GOM) sales in the 2002-2007 OCS Oil and Gas Leasing Program. This single multisale process will cover all proposed sales in both planning areas. The Call, the initial step in the process, will cover ten sales—five Central GOM sales and five Western GOM sales. There will also be complete National Environmental Policy Act, OCS Lands Act, and Coastal Zone Management Act coverage for each sale. We propose to prepare an Environmental Assessment for Sale 184, Western GOM, tiering off the previous multisale EIS for Western GOM Sales. We propose to prepare one multisale EIS for the remaining nine Central and Western GOM sales in the 2002-2007 OCS Leasing Program.

**DATES:** Nominations and comments must be received no later than October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** For information on the Call for Information and Nominations, please contact Ms. Jane Burrell Johnson, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, telephone (504) 736-2811. For information on the Notice of Intent to Prepare an EIS, please contact, Mr. Joseph Christopher, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, telephone (504) 736-2788.

**SUPPLEMENTARY INFORMATION:** In 1996, MMS adopted multisale processes for sales in the Central and Western GOM. The multisale process for each planning area incorporated prelease planning and analysis steps for all sales proposed in the 1997-2002 OCS Oil and Gas Leasing Program (except for the first sale in the Western GOM, which was covered in a previous Call and EIS). MMS proposes to adopt a similar process for the Central and Western GOM sales in the 2002-2007 OCS Oil and Gas Leasing Program. For the Proposed 5-Year Program, a single multisale process will cover all proposed sales in both planning areas.

## Call for Information and Nominations

### 1. Authority

This Call is published pursuant to the OCS Lands Act as amended (43 U.S.C. 1331–1356, (1994), and the regulations issued thereunder (30 CFR part 256).

### 2. Purpose of Call

The purpose of the Call is to gather information for the following tentatively scheduled OCS Lease Sales in the Central and Western GOM:

Sale, OCS planning area	Tentative sale date
Sale 184, Western GOM ...	August 2002.
Sale 185, Central GOM .....	March 2003.
Sale 187, Western GOM ...	August 2003.
Sale 190, Central GOM .....	March 2004.
Sale 192, Western GOM ...	August 2004.
Sale 194, Central GOM .....	March 2005.
Sale 196, Western GOM ...	August 2005.
Sale 198, Central GOM .....	March 2006.
Sale 200, Western GOM ...	August 2006.
Sale 201, Central GOM .....	March 2007.

Information and nominations on oil and gas leasing, exploration, and development and production within the Central and Western GOM are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, and regulations at 30 CFR part 256.

Please note this is the third issuance of a multisale Call by MMS and the first Call in the Proposed 5-Year Program for 2002–2007. Responses are requested relative to proposed sales in both the Central and Western GOM OCS Planning Areas. Eighteen years of experience with leasing at an annual areawide pace has shown that the sale proposals in the Central and Western GOM are very similar from year to year. This makes possible the use of a multisale process, described herein, to address decisions for all ten lease sales proposed for both the Central and Western GOM Planning Areas. This Call covers five sales in the Central Planning Area and five sales in the Western Planning Area. We propose to prepare an Environmental Assessment for Sale 184, Western GOM, tiering off the previous multisale EIS for Western GOM Sales. We propose to prepare one multisale EIS for the remaining nine sales in the 2002–2007 OCS Leasing Program. There will be complete NEPA coverage for each sale—an EIS, an EA, or a Supplemental EIS focusing primarily on new issues. We will prepare a Consistency Determination

and proposed and final Notices of Sale for each proposed sale in accordance with Coastal Zone Management Act and OCS Lands Act requirements.

This Call does not indicate a preliminary decision to lease in the areas described below. Final delineation of each area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the NEPA and OCS Lands Act. Established Departmental procedures will be employed.

### 3. Description of Areas

The general areas of this Call cover the entire Central and Western GOM, except for those exclusions listed in Item 4, “Areas Excluded from this Call,” under the Call for Information and Nominations. The Central GOM is bounded on the east by approximately 88 degrees W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the continental shelf boundary with Mexico as established by the “Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles,” which took effect in January 2001, thence generally eastward to approximately 88 degrees W. longitude. The planning area is bounded on the north by the Federal-State boundary offshore Louisiana, Mississippi, and Alabama. The area available for nominations and comments at this time consists of approximately 47.80 million acres, of which approximately 25.15 million acres are currently unleased.

The Western GOM is bounded on the west and north by the Federal-State boundary offshore Texas; the eastern boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28 degrees N. latitude, thence east to approximately 92 degrees W. longitude, thence south to the maritime boundary with Mexico as established by the “Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles,” which took effect in January 2001. The planning area lies offshore Texas and, in deeper water, offshore Louisiana. The area available for nominations and comments at this

time consists of approximately 35.90 million acres, of which approximately 13.42 million acres are currently unleased.

A standard Call for Information Map depicting the Central and Western GOM on a block-by-block basis is available without charge from: Minerals Management Service, Public Information Unit (MS 5034), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: 1–800–200–GULF.

### 4. Areas Excluded From This Call

A. The entire Central GOM will be considered for possible leasing except:

1. The following blocks which are beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap: Lund South (Area NG16–07) Blocks 172 and 173; 213 through 217; 252 through 261; 296 through 305; and 349.

2. The following whole and partial blocks which are beyond the United States Exclusive Economic Zone in the area formerly known as the northern portion of the Western Gap and which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

*Partial blocks:* Amery Terrace (Area NG15–09) Blocks 235 through 238; 273 through 279; 309 through 317; and

*Whole blocks:* Amery Terrace (Area NG15–09) Blocks 280, 281; 318 through 320; and 355 through 359.

B. The entire Western GOM will be considered for possible leasing except:

1. Two blocks in the High Island Area, East Addition, South Extension, Blocks A–375 and A–398 (at the Flower Garden Banks), and the portions of other blocks within the boundary of the Flower Garden Banks National Marine Sanctuary.

2. The following whole and partial blocks which are beyond the United States Exclusive Economic Zone in the area formerly known as the Northern Portion of the Western Gap and which lie within the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico:

*Whole blocks:* Sigsbee Escarpment (Area NG15–08) Blocks 11, 57, 103, 148, 149, 194, 239, 284, and 331 through 341; and

*Partial blocks:* Keathley Canyon (Area NG15–05) Blocks 978 through 980; and Sigsbee Escarpment (Area NG15–08) Blocks 12 through 14; 58 through 60; 104 through 106; 150, 151, 195, 196, 240, 241; 285 through 298; and 342 through 349.

### 5. Instructions on Call

The standard Call for Information Map and indications of interest and comments must be submitted to: Ms. Jane Burrell Johnson, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Envelopes should be labeled "Nominations for Proposed 2002-2007 Lease Sales in the Central and Western Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 2002-2007 Lease Sales in the Central and Western Gulf of Mexico."

The standard Call for Information Map delineates the Call area, all of which has been identified by MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in each of the proposed sales in the Central and Western GOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents are encouraged to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in the analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 (low).

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information that might bear upon the potential leasing and development of particular areas. Comments are also

sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs. If possible, these comments should identify specific Coastal Management Plans policies of concern, the nature of the conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

### 6. Use of Information From Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected in the scoping process for the EIS and to develop proposed actions and alternatives. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. And, fifth, comments may be used to assess potential conflicts between offshore gas and oil activities and a State Coastal Management Plan.

### 7. Existing Information

MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on tentatively scheduled lease sales. As a result of this continually ongoing assessment, it has been determined that the status of the existing data available for planning, analysis, and decisionmaking is adequate and extensive.

An extensive environmental studies program has been underway in the GOM since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports, and information for ordering copies, can be obtained from the Public Information Unit referenced under Item 3, "Description of Area." The reports may also be ordered,

for a fee, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or telephone (703) 487-4650. In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Sciences Section (MS 5430), Gulf of Mexico OCS Region (see address under Item 3, "Description of Areas"), or telephone (504) 736-2752.

Summary Reports and Indices and technical and geological reports are available for review at the MMS, Gulf of Mexico OCS Region. Copies of the Gulf of Mexico OCS Regional Summary Reports may be obtained from the Technical Communication Service, Minerals Management Service, 381 Elden Street, MS 4063, Herndon, Virginia 20170, phone: (703) 787-1080.

### 8. Tentative Schedule

The following is a list of tentative milestone dates applicable to sales covered by this Call:

#### Multisale Process Milestones for Proposed 2002-2007 Central and Western GOM Sales

Call/NOI  
September 2001  
Comments received on Call/NOI  
October 2001  
Area Identification Decision for 10 sales (5 Western GOM and 5 Central GOM)  
October 2001  
EA completed for Western GOM Sale 184  
March 2002  
Draft EIS published for 9 sales (5 Central GOM and 4 Western GOM)  
April 2002  
Public Hearings on Draft EIS  
June 2002  
Final EIS for 9 sales (5 Central GOM and 4 Western GOM)  
November 2002

#### Sale-specific Process Milestones for Proposed 2002-2007 Central and Western GOM Sales

Request for Information to Begin Sale-Specific Process  
12 months before each sale  
Environmental Review (EA/Finding of No Significant Impact/Supplemental EIS (EA/FONSI/SEIS)) published  
4 to 7 months before each sale  
Proposed Notice and Consistency Determination  
4 months before each sale  
Final Notice of Sale  
1 month before each sale  
Tentative Sale Dates  
March (Central GOM) and August (Western GOM) of each year

### Notice of Intent To Prepare an EIS

#### 1. Authority

The Notice of Intent is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of

the NEPA of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)).

## 2. Purpose of Notice of Intent

Pursuant to the regulations implementing the procedural provisions of the NEPA, MMS is announcing its intent to prepare an EIS on the tentatively scheduled 2002–2007 oil and gas leasing proposals in the Central and Western GOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The NOI also serves to announce the scoping process for this EIS. Throughout the scoping process, Federal, State, and local government agencies, and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of oil and natural gas leasing, exploration, development, and production in the areas identified through the Area Identification procedure as the proposed lease sale areas. Alternatives that may be considered for each sale are to delay the sale, cancel the sale, or modify the sale.

Federal regulations allow for several proposals to be analyzed in one EIS (40 CFR 1502.4). Since each sale proposal and projected activities are very similar each year for each planning area, MMS is proposing to prepare a single EIS (multisale EIS) for the nine Central and Western Planning Area lease sales scheduled for 2002–2007 in the draft proposed *Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007*. The multisale approach is intended to focus the NEPA/EIS process on differences between the proposed sales and on new issues and information. The multisale EIS will eliminate the repetitive issuance of complete draft and final EISs for each planning area. The resource estimates and scenario information for the EIS analyses will be presented as a range that would encompass the resources and activities estimated for any of the nine proposed lease sales. At the completion of this EIS process, decisions will be made only for proposed Sales 185 and 187, scheduled to be held in 2003. Subsequent to these first sales in the planning areas, a NEPA review will be conducted for each of the other proposed lease sales in the 2002–2007 Leasing Program. Formal consultation with other Federal Agencies, the affected States, and the public will be carried out to assist in the determination of whether or not the information and analyses in the original multisale EIS are still valid. These consultations and NEPA reviews will be

completed before decisions are made on the subsequent sales.

## 3. Comments

We request that Federal, State, local government agencies, and other interested parties send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394, telephone (504) 736–2788 or 1–800–200–GULF. Please enclose your comments in an envelope labeled “Comments on the Multisale EIS.” MMS will hold scoping meetings in appropriate locations to obtain additional comments and information regarding the scope of the EIS. We will announce the scoping meetings in the **Federal Register** and advertise the meetings in local community newspapers.

Dated: August 29, 2001.

**Thomas R. Kitsos,**

*Acting Director, Minerals Management Service.*

[FR Doc. 01–22918 Filed 9–11–01; 8:45 am]

**BILLING CODE 4310–MR–P**

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–445]

### In the Matter of Certain Plasma Display Panels and Products Containing Same; Notice of Decision to Extend the Deadline for Determining Whether To Review an Initial Determination Granting-in-Part a Motion To Declassify Certain Documents

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to extend by forty-five (45) days, or until November 2, 2001, the deadline for determining whether to review an initial determination (ID) (Order No. 30) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for

inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol.public>. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on January 16, 2001, based on a complaint filed by the Board of Trustees of the University of Illinois of Urbana, Illinois, and Competitive Technologies of Fairfield, Connecticut. The respondents named in the investigation are Fujitsu Limited, Fujitsu General Limited, Fujitsu General America Corp., Fujitsu Microelectronic, Inc. and Fujitsu Hitachi Plasma Display Ltd. (collectively, “Fujitsu”). The complaint, now withdrawn, alleged that Fujitsu violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling within the United States after importation certain plasma display panels and products containing same by reason of infringement of certain claims of U.S. Letters Patent Nos. 4,866,349 and 5,0821,400.

On June 26, 2001, complainant moved to withdraw its complaint and terminate the investigation. On July 10, 2001, the presiding ALJ issued an ID granting the motion and terminating the investigation. The Commission decided not to review this ID on July 31, 2001, and it therefore became the Commission's final determination under Commission rule 210.42, 19 CFR 210.42. 66 FR 40722 (August 3, 2001).

On July 3, 2001, Fujitsu moved pursuant to Commission rule 210.20, 19 CFR 210.20, and paragraphs 2(b) and 3 of the protective order issued in this investigation for an order declassifying two documents. Complainant opposed the motion. The Commission investigative attorney supported the motion as to one document and opposed as to the other. On August 17, 2001, the presiding ALJ issued an ID granting the motion to declassify one document. He denied the motion to declassify the other document at issue. Complainant filed a petition for review of the ID on August 30, 2001.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and section 210.42(h) of the Commission Rules of Practice and Procedure, 19 CFR 210.42(h).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

By order of the Commission.

Issued: September 6, 2001.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-22824 Filed 9-11-01; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL3-93]

#### Factory Mutual Research Corporation, Renewal of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of Factory Mutual Research Corporation (FMRC) for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This renewal becomes effective on September 12, 2001 and will be valid until September 12, 2006, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

#### SUPPLEMENTARY INFORMATION:

##### Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal of recognition of Factory Mutual Research Corporation (FMRC) as a Nationally Recognized Testing Laboratory (NRTL). FMRC's

renewal covers its existing scope of recognition, which may be found in OSHA's informational web page for the NRTL (<http://www.osha-slc.gov/dts/otpc/nrtl/fmrc.html>). We maintain such a web page for each NRTL.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

When OSHA published its regulations for the NRTL Program at 29 CFR 1910.7, it temporarily recognized FMRC as a nationally recognized testing laboratory for a five year period from June 13, 1988, through June 13, 1993 (see Appendix A to 1910.7). In Appendix A, OSHA also required that FMRC apply for renewal of its OSHA recognition at the end of this temporary period. FMRC did apply for the renewal, which OSHA announced on March 29, 1995 (60 FR 16167). In its renewal application, FMRC stated that it began testing products in 1886 and that its first published listings of approved fire hose appeared in 1907.

FMRC received its first renewal of recognition on August 16, 1995 (60 FR 42590), for a period of five years ending on August 16, 2000. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. FMRC submitted a request to renew its recognition on November 9, 1999 (see Exhibit 11), within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

OSHA published the required notice in the **Federal Register** on May 4, 2001 (66 FR 22605). The May 2001 notice included a preliminary finding that FMRC could meet the requirements in 29 CFR 1910.7 for renewal of its recognition and invited public comment on the applications by May 18, 2001. OSHA received no comments concerning this notice.

In processing FMRC's request for renewal of recognition, OSHA performed on-site reviews (audits) of FMRC's facilities. NRTL Program assessment staff reviewed information from these reviews and, in a memo dated October 30, 2000 (see Exhibit 12), recommended the renewal of FMRC's recognition.

The other **Federal Register** documents published by OSHA concerning FMRC's recognition covered an expansion for additional test standards, which the Agency announced on April 16, 1999 (64 FR 18939) and granted on August 13, 1999 (64 FR 44240).

You may obtain or review copies of all public documents pertaining to the FMRC application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL3-93, the permanent record of public information on the FMRC recognition.

The current addresses of the FMRC testing facilities (sites) recognized by OSHA are:

Factory Mutual Research Corporation,  
1151 Boston-Providence Turnpike,  
Norwood, Massachusetts 02062  
Factory Mutual Research Corporation,  
743 Reynolds Road, West Gloucester,  
Rhode Island 02814

#### Programs and Procedures

The renewal of recognition includes FMRC's continued use of the following supplemental programs, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA previously granted FMRC recognition to use these programs, which are listed, as shown below, in OSHA's informational web page on the FMRC recognition (<http://>

[www.osha-slc.gov/dts/otpc/nrtl/fmrc.html](http://www.osha-slc.gov/dts/otpc/nrtl/fmrc.html)).

Program 2: Acceptance of testing data from independent organizations, other than NRTLs

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs

Program 4: Acceptance of witnessed testing data

Program 5: Acceptance of testing data from non-independent organizations

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing)

Program 7: Acceptance of continued certification following minor modifications by the client

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

#### Final Decision and Order

The NRTL Program staff has examined the applications, the auditor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that Factory Mutual Research Corporation has met the requirements of 29 CFR 1910.7 for renewal of its NRTL recognition. The renewal applies to the sites listed above. In addition, it covers the test standards listed below, and it is subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of FMRC, subject to these limitations and conditions.

#### Limitations

##### *Renewal of Recognition of Facilities*

OSHA limits the renewal of recognition of FMRC to the 2 sites listed above. In addition, similar to other NRTLs that operate multiple sites, the Agency's recognition of any FMRC testing site is limited to performing

testing to the test standards for which OSHA has recognized FMRC, and for which the site has the proper capability and control programs.

##### *Renewal of Recognition of Test Standards*

OSHA further limits the renewal of recognition of FMRC to testing and certification of products for demonstration of conformance to the test standards listed below (see Listing of Test Standards). OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c). Some of the test standards for which OSHA previously recognized FMRC were no longer appropriate at the time of preparation of the preliminary notice, primarily because they had been withdrawn by the standards developing organization. Also, OSHA recently learned that one test standard listed in the preliminary notice, ANSI S12.15 Hydrogen Sulfide Detection Instruments, was withdrawn after publication of that notice. As a result, we have excluded these test standards in the listing below. However, under OSHA policy, the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering comparable product testing. Since a number of NRTLs are similarly affected, OSHA will publish a separate notice to make the appropriate substitutions for FMRC and other NRTLs that were recognized for these standards. The Agency has contacted these NRTLs regarding this matter.

The Agency's recognition of FMRC, or any other NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of the test standard for which OSHA has no testing and certification requirements.

##### *Listing of Test Standards*

ANSI ICS 2 Industrial Control Devices, Controllers and Assemblies

ANSI S12.12 Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations

ANSI S82.02.01 Electric and Electronic Test, Measuring, Controlling, and Related Equipment: General Requirements

ANSI S82.02.02 Electrical Equipment for Measurement, Control, and Laboratory Use

ANSI Z8.1 Commercial Laundry and Drycleaning Equipment and Operations

UL 8 Foam Fire Extinguishers

ANSI 11 Low Expansion Foam and Combined Agent Systems

ANSI 11A Medium- and High-Expansion Foam Systems

ANSI 12 Carbon Dioxide Extinguishing Systems

ANSI 12A Halon 1301 Fire Extinguishing Agent Systems

ANSI 13 Installation of Sprinkler Systems

ANSI 16 Deluge Foam-Water Sprinkler and Spray Systems

ANSI 17 Dry Chemical Extinguishing Systems

ANSI 20 Centrifugal Fire Pumps

UL 38 Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems

ANSI 72 Installation, Maintenance, and Use of Protective Signaling Systems

UL 154 Carbon-Dioxide Fire Extinguishers

UL 162 Foam Equipment and Liquid Concentrates

ANSI 250 Enclosures for Electrical Equipment

UL 299 Dry Chemical Fire Extinguishers

UL 346 Waterflow Indicators for Fire Protective Signaling Systems

UL 347 High-Voltage Industrial Control Equipment

UL 508 Electric Industrial Control Equipment

UL 558 Industrial Trucks, Internal Combustion Engine-Powered

UL 583 Electric-Battery-Powered Industrial Trucks

UL 626 2 1/2 Gallon Stored-Pressure, Water-Type Fire Extinguishers

UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines

UL 674 Electric Motors and Generators for Use in Hazardous (Classified) Locations

UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations

UL 711 Rating and Fire Testing of Fire Extinguishers

UL 753 Alarms Accessories for Automatic Water-Supply Control Valves

UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations

UL 823 Electric Heaters for Use in Hazardous (Classified) Locations

UL 827 Central-Stations for Watchmen, Fire-Alarm, and Supervisory Services

UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations

UL 863 Time-Indicating and -Recording Appliances  
 UL 864 Control Units for Fire-Protective Signaling Systems  
 UL 877 Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations  
 UL 886 Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations  
 UL 894 Switches for Use in Hazardous (Classified) Locations  
 UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations  
 UL 1002 Electrically Operated Valve for Use in Hazardous (Classified) Locations  
 UL 1058 Halogen Agent Extinguishing System Units  
 UL 1093 Halogenated Agent Fire Extinguishers  
 FMRC 1110 Indicator Posts  
 UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations  
 UL 1206 Electrical Commercial Clothes-Washing Equipment  
 UL 1207 Sewage Pumps for Use in Hazardous (Classified) Locations  
 FMRC 1221 Backflow Preventers  
 UL 1236 Battery Chargers for Charging Engine-Starter Batteries  
 UL 1240 Electric Commercial Clothes-Drying Equipment  
 UL 1254 Pre-Engineered Dry Chemical Extinguishing System Units  
 UL 1262 Laboratory Equipment  
 FMRC 1321 Controllers for Electric Motor Driven Fire Pumps  
 FMRC 1333 Diesel Engine Fire Pump Drivers  
 FMRC 1635 Plastic Pipe and Fittings for Automatic Sprinkler Systems  
 UL 1950 Information Technology Equipment Including Electrical Business Equipment  
 FMRC 2000 Automatic Sprinklers for Fire Protection  
 FMRC 2008 Early Suppression-Fast Response (ESFR) Automatic Sprinklers  
 FMRC 3260 Flame Radiation Detectors for Automatic Fire Alarm Signaling  
 FMRC 3600 Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements  
 FMRC 3610 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, I and III, Division 1 Hazardous (Classified) Locations  
 FMRC 3611 Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations  
 FMRC 3615 Explosion proof Electrical Equipment, General Requirements

FMRC 3620 Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations  
 FMRC 3810 Electrical and Electronic Test, Measuring, and Process Control Equipment  
 FMRC 3990 Less or nonflammable Liquid-Insulated Transformers  
 FMRC 6051 Safety Containers and Filing, Supply and Disposal Containers  
 FMRC 6310 Combustible Gas Detectors  
 FMRC 7812 Industrial Trucks—LP-Gas  
 FMRC 7816 Industrial Trucks—LP-Gas Dual Fuel  
 FMRC 7820 Industrial Trucks—Electric

**Note:** Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas")

The designations and titles of the above test standards were current at the time of the preparation of the notice of the preliminary finding.

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (e.g., UL 1950) for the standard, as opposed to the ANSI designation (e.g., ANSI/UL 1950). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (<http://www.ansi.org>) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

#### Conditions

FMRC must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

If FMRC has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

FMRC must not engage in or permit others to engage in any

misrepresentation of the scope or conditions of its recognition. As part of this condition, FMRC agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

FMRC must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

FMRC will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

FMRC will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, D.C. this 27 day of August, 2001.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 01-22827 Filed 9-11-01; 8:45 am]

**BILLING CODE 4510-26-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket Nos. NRTL1-88, NRTL1-89, NRTL2-90, NRTL3-90, NRTL2-92, NRTL3-92, NRTL1-93, NRTL2-93, NRTL3-93, NRTL4-93, NRTL1-97, NRTL1-98]

### Modify Scope of Recognition of NRTLs

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice modifies the scope of recognition of certain Nationally Recognized Testing Laboratories (NRTLs).

**EFFECTIVE DATE:** September 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693-2110.

**SUPPLEMENTARY INFORMATION:** The Occupational Safety and Health Administration (OSHA) hereby gives notice of changes to the scope of recognition of the Nationally Recognized Testing Laboratories (NRTLs) listed below. Specifically, some of the test standards for which OSHA

previously recognized each NRTL are no longer "appropriate test standards" primarily because they have been withdrawn or superseded. As a result, we will remove them from the listing of test standards in our informational web page for each NRTL, which detail OSHA's official scope of recognition for the NRTL. These web pages can be accessed at <http://www.osha-slc.gov/dts/otpcanrtl/index.html>. In this notice, we list the test standards to be removed for each NRTL below under the heading "Withdrawn or Superseded Standards." We provide the following information for those who may be unfamiliar with OSHA requirements concerning NRTLs.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

In testing and certifying (i.e., approving) such products, NRTLs must demonstrate that the products conform to "appropriate test standards." This term is defined under 29 CFR 1910.7(c) and essentially means consensus-based product safety test standards developed and maintained current by U.S.-based standards developing organizations (SDOs). Such test standards are not OSHA standards, which are general requirements that employers must meet, but, individually, specify the safety technical requirements that a particular type of product must meet.

OSHA recognizes each NRTL for a particular scope of recognition, which includes a list of those product safety test standards that the NRTL may use in approving products. As a normal part of its operations, an SDO occasionally withdraws existing test standards or adopts superseding test standards. In such cases, OSHA can no longer consider the withdrawn or superseded standards as "appropriate," and as a result, the Agency can no longer recognize NRTLs for the standard.

To replace the test standards we are removing, under our policy, the NRTL may request or OSHA can provide recognition for comparable test standards, i.e., other appropriate test standards covering comparable product testing. We list these test standards below for each NRTL under the headings "Comparable Replacement

Standards." In some cases (noted by a double asterisk in the particular heading), OSHA may already recognize the NRTL for the comparable test standard. In such cases, we do not list the replacement test standards below. In other cases, there is no replacement standard or the NRTL did not request one prior to publication of this notice. However, if we receive such a request after publication of this notice and determine the test standard is "comparable," as described above, OSHA will add it to the NRTL's scope of recognition and therefore to OSHA's informational web page for the NRTL.

#### **Applied Research Laboratories, Inc. (ARL)**

[Docket No. NRTL1-97]

##### *Withdrawn or Superseded Standards*

ASTM E152 Standard Methods of Fire Tests of Door Assemblies  
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens

##### *Comparable Replacement Standards (if applicable)*

ASTM E2074 Standard Method for Fire Tests of Door Assemblies  
ANSI Z83.11 Gas Food Service Equipment—Ranges and Unit Broilers  
UL 10A Tin-Clad Fire Doors  
UL 10B Fire Tests of Door Assemblies  
UL 1598 Luminaries (see Note on UL 1598 below; currently, ARL is recognized for UL 1570, UL 1571, and UL 1572)

#### **Canadian Standards Association (CSA)**

[Docket No. NRTL2-92]

##### *Withdrawn or Superseded Standards*

ANSI Z21.5 Gas Clothes Dryers  
ANSI Z21.10 Gas Water Heaters  
ANSI Z21.11 Gas-Fired Room Heaters  
ANSI Z21.44 Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces  
ANSI Z21.64 Direct Vent Central Furnaces  
ANSI Z83.9 Gas-Fired Duct Furnaces  
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens  
ANSI Z83.13 Gas Food Service Equipment—Deep Fat Fryers  
ANSI Z83.14 Gas Food Service Equipment—Counter Appliances  
ANSI Z83.15 Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators  
ANSI Z83.16 Gas-Fired Unvented Commercial and Industrial Heaters  
ANSI/UL 114 Electric Office Appliances and Business Equipment

ANSI/UL 133 Wires and Cables With Varnished Cloth Insulation  
ANSI/UL 303 Refrigeration and Air-Conditioning Condensing and Compressor Units  
ANSI/UL 465 Central Cooling Air Conditioners  
ANSI/UL 478 Information-Processing and Business Equipment  
ANSI/UL 519 Impedance-Protected Motors  
ANSI/UL 543 Electrical Conduit  
ANSI/UL 547 Thermal Protectors for Electric Motors  
ANSI/UL 559 Heat Pumps  
ANSI/UL 560 Electric Home-Laundry Equipment  
ANSI/UL 611 Central-Station Burglar-Alarm Systems  
ANSI/UL 869 Electrical Service Equipment  
ANSI/UL 883 Fan-Coil Units and Room-Fan Heater Units  
ANSI/UL 1025 Electric Air Heaters  
UL 1092 Process Control Equipment  
ANSI/UL 1096 Electric Central Air-Heating Equipment  
ANSI/UL 1438 Household Electric Drip-Type Coffee Makers  
ANSI/UL 1555 Electric Coin-Operated Clothes-Washing Equipment  
ANSI/UL 1556 Electric Coin-Operated Clothes-Drying Equipment  
ANSI/UL 1624 Light Industrial and Fixed Electric Tools  
ANSI/UL 1663 Electric Hot Tubs, Spas, and Associated Equipment

##### *Comparable Replacement Standards (if applicable)\*\**

ANSI Z21.10.2 Water Heaters—Sidearm Type Water Heaters  
ANSI Z21.11.1 Gas-Fired Room Heaters—Volume I—Vented Room Heaters  
ANSI Z21.11.2 Gas-Fired Room Heaters—Volume II—Unvented Room Heaters  
UL 1598 Luminaries (see Note on UL 1598 below; currently, CSA is recognized for UL 1570, UL 1571, and UL 1572)

#### **Entela, Inc. (ENT)**

[Docket No. NRTL2-93]

##### *Withdrawn or Superseded Standards*

ANSI/UL 559 Heat Pumps  
ANSI/UL 560 Electric Home-Laundry Equipment  
ANSI/UL 869 Electrical Service Equipment  
ANSI/UL 883 Fan-Coil Units and Room-Fan Heater Units  
UL 962 Household and Commercial Furnishing  
ANSI/UL 1096 Electric Central Air-Heating Equipment  
ANSI/UL 1438 Household Electric Drip-Type Coffee Makers

ANSI/UL 1555 Electric Coin Operated Clothes Washing Equipment  
ANSI/UL 1556 Electric Coin Operated Clothes Drying Equipment

*Comparable Replacement Standards (if applicable)*

UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances  
UL 1598 Luminaries (see Note on UL 1598 below; currently, Entela is recognized for UL 1570, UL 1571, and UL 1572)  
UL 1995 Heating and Cooling Equipment  
UL 2157 Electric Clothes Washing Machines and Extractors  
UL 2158 Electric Clothes Dryers

**Factory Mutual Research Corporation (FMRC)**

[Docket No. NRTL3-93]

*Withdrawn or Superseded Standards*

ANSI/ISA S12.13.1 Performance Requirements for Combustible Gas Detectors  
ANSI S12.15 Hydrogen Sulfide Detection Instruments  
ANSI S82.03 Electrical and Electronic Process Measuring and Control  
ANSI/UL 1555 Electric Coin-Operated Clothes-Washing Equipment  
ANSI/UL 1556 Electric Coin-Operated Clothes-Drying Equipment

*Comparable Replacement Standards (if applicable)*

UL 2157 Electric Clothes Washing Machines and Extractors  
UL 2158 Electric Clothes Dryers

**Intertek Testing Services NA, Inc. (ITSNA)**

[Docket No. NRTL1-89]

*Withdrawn or Superseded Standards*

ANSI S12.13 Performance Requirements for Combustible Gas Detectors  
ANSI Z21.64 Direct Vent Central Furnaces  
ANSI Z83.9 Gas-Fired Duct Furnaces  
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens  
ANSI Z83.13 Gas Food Service Equipment—Deep Fat Fryers  
ANSI Z83.14 Gas Food Service Equipment—Counter Appliances  
ANSI Z83.15 Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators  
ANSI Z83.16 Gas-Fired Unvented Commercial and Industrial Heaters  
ANSI/UL 114 Electric Office Appliances and Business Equipment

ANSI/UL 303 Refrigeration and Air Conditioning Condensing and Compressor Units  
ANSI/UL 465 Central Cooling Air Conditioners  
ANSI/UL 478 Information-Processing and Business Equipment  
ANSI/UL 519 Impedance-Protected Motors  
ANSI/UL 543 Impregnated-Fiber Electrical Conduit  
ANSI/UL 547 Thermal Protectors for Electric Motors  
ANSI/UL 559 Heat Pumps  
ANSI/UL 560 Electric Home-Laundry Equipment  
ANSI/UL 869 Electric Service Equipment  
ANSI/UL 883 Fan-Coil Units and Room Fan-Heater Units  
ANSI/UL 1025 Electric Air Heaters  
ANSI/UL 1096 Electric Central Air-Heating Equipment  
ANSI/UL 1438 Household Electric Drip-Type Coffee Makers  
ANSI/UL 1555 Electric Coin-Operated Clothes-Washing Equipment  
ANSI/UL 1556 Electric Coin-Operated Clothes-Drying Equipment  
ANSI/UL 1624 Light Industrial and Fixed Electric Tools

*Comparable Replacement Standards (if applicable)\*\**

ASTM E2010 Standard Test Method for Positive Pressure Fire Tests of Window Assemblies (OSHA previously recognized ITSNA for ASTM E163, which was superseded by ASTM E2010)  
ASTM E2074 Standard Method for Fire Tests of Door Assemblies (OSHA previously recognized ITSNA for ASTM E152, which was superseded by ASTM E2074)  
UL 869A Standard for Service Equipment  
UL 2111 Overheating Protection for Motors  
UL 1598 Luminaries (see Note on UL 1598 below; currently, ITSNA is recognized for UL 1570, UL 1571, and UL 1572)

**MET Laboratories, Inc. (MET)**

[Docket No. NRTL1-88]

*Withdrawn or Superseded Standards*

ANSI/UL 114 Electric Office Appliances and Business Equipment  
ANSI/UL 465 Central Cooling Air Conditioners  
ANSI/UL 478 Information-Processing and Business Equipment  
ANSI/UL 559 Heat Pumps  
ANSI/UL 869 Electrical Service Equipment  
ANSI/UL 883 Fan-Coil Units and Room Fan-Heater Units

ANSI/UL 1025 Electric Air Heaters  
*Comparable Replacement Standards (if applicable)*

UL 869A Standard for Service Equipment  
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles  
UL 1598 Luminaries (see Note on UL 1598 below; currently, MET is recognized for UL 1570 and UL 1571)

**National Technical Systems, Inc. (NTS)**

[Docket No. NRTL1-98]

*Withdrawn or Superseded Standards*

ANSI/UL 465 Central Cooling Air Conditioners

*Comparable Replacement Standards (if applicable)*

UL 1995 Heating and Cooling Equipment

**Southwest Research Institute (SWRI)**

[Docket No. NRTL3-90]

*Withdrawn or Superseded Standards*

ASTM E152 Standard Methods of Fire Tests of Door Assemblies

*Comparable Replacement Standards (if applicable)*

ASTM E2074 Standard Method for Fire Tests of Door Assemblies

**SGS U.S. Testing Company, Inc. (SGSUS)**

[Docket No. NRTL2-90]

*Withdrawn or Superseded Standards*

None.

*Comparable Replacement Standards (if applicable)*

UL 1598 Luminaries (see Note on UL 1598 below; currently, SGSUS is recognized for UL 1571)

**TUV Rheinland of North America, Inc. (TUV)**

[Docket No. NRTL3-92]

*Withdrawn or Superseded Standards*

None.

*Comparable Replacement Standards (if applicable)*

UL 1598 Luminaries (see Note on UL 1598 below; currently, TUV is recognized for UL 1570 and UL 1571)

**Underwriters Laboratories Inc. (UL)**

[Docket No. NRTL4-93]

*Withdrawn or Superseded Standards*

ANSI/IEEE C57.13.2 Instrument Transformers—Conformance Test Procedures

ANSI Z21.44 Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces

ANSI Z21.64 Direct Vent Central Furnaces

ANSI Z83.9 Gas-Fired Duct Furnaces

ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens

ANSI Z83.13 Gas Food Service Equipment—Deep Fat Fryers

ANSI Z83.14 Gas Food Service Equipment—Counter Appliances

ANSI Z83.15 Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators

ANSI Z83.16 Gas-Fired Unvented Commercial and Industrial Heaters

ANSI/UL 303 Refrigeration and Air-Conditioning Condensing and Compressor Units

UL 408 Stationary Medium Pressure Acetylene Generators

UL 409 Stationary Low-Pressure Acetylene Generators

ANSI/UL 465 Central Cooling Air Conditioners

ANSI/UL 519 Impedance-Protected Motors

ANSI/UL 543 Impregnated-Fiber Electrical Conduit

ANSI/UL 547 Thermal Protectors for Electric Motors

ANSI/UL 559 Heat Pumps

ANSI/UL 560 Electric Home-Laundry Equipment

ANSI/UL 611 Central-Station Burglar-Alarm Systems

ANSI/UL 869 Electrical Service Equipment

ANSI/UL 883 Fan-Coil Units and Room-Fan Heater Units

UL 962 Household and Commercial Furnishings

ANSI/UL 1025 Electric Air Heaters

ANSI/UL 1096 Electric Central Air-Heating Equipment

ANSI/UL 1438 Household Electric Drip-Type Coffee Makers

ANSI/UL 1555 Electric Coin-Operated Clothes-Washing Equipment

ANSI/UL 1556 Electric Coin-Operated Clothes-Drying Equipment

ANSI/UL 1624 Light Industrial and Fixed Electric Tools

*Comparable Replacement Standards (if applicable) \*\**

UL 1598 Luminaries (see Note on UL 1598 below; currently, UL is recognized for UL 1570 and UL 1571)

**Wyle Laboratories, Inc. (WL)**

[Docket No. NRTL1-93]

*Withdrawn or Superseded Standards*

None.

*Comparable Replacement Standards (if applicable)*

UL 1598 Luminaries (see Note on UL 1598 below; currently, WL is recognized for UL 1570 and UL 1571)

**\*\* Note:** The NRTL has already received recognition for some of the replacement standards.

**Note on UL 1598:** UL 1598 Luminaries is the superseding test standard for three current UL standards: UL 1570, UL 1571, and UL 1572. Although these three standards have not been withdrawn at the date of this notice, UL 1598 is now in effect. OSHA has received a request for recognition of this new standard. In anticipation of the withdrawal, we are granting this request now for any NRTL recognized for one of the three superseded standards.

In accordance with OSHA policy pertaining to recognition of replacement standards, the Agency only publishes one **Federal Register** notices to note the changes to the NRTL's scope of recognition. Changes to each NRTL's recognition are limited to those described in this notice. All other terms and conditions of each NRTL's recognition remain the same.

Signed at Washington, D.C. this 27 day of August, 2001.

**John L. Henshaw,**

*Assistant Secretary.*

[FR Doc. 01-22828 Filed 9-11-01; 8:45 am]

**BILLING CODE 4510-26-P**

**MERIT SYSTEMS PROTECTION BOARD**

**Sunshine Act Notice**

*Notice:* Pursuant to the Government in the Sunshine Act (5 U.S.C. 552(b)), notice is hereby given that the Merit Systems Protection Board held a closed meeting on Friday, September 7, 2001, at 2 p.m., in the Board's conference room at 1615 M Street, NW., 6th Floor, Washington, DC 20419. In calling the meeting, the Board determined that Board business required its consideration of the agenda items on less than seven days' notice to that public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered by authority of subsections (c)(10) and (c)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(10) and 5 U.S.C. 552b(c)(2)).

*Matters Considered:*

(1) MSPB FY2002-2003 Performance Plan;

(2) Status of *Azdell v. Office of Personnel Management*, Docket No. DC-0731-97-0367-C-1;

(3) Discussion of target group of cases (cases expected to be over 300 days old by September 30th), if any;

(4) Appreciation of efforts in accomplishing 2001 goals;

(5) Expedited Petition for Review Pilot.

*Contact Person for Additional Information:* Shannon McCarthy or Matthew Shannon, Office of the Clerk of the Board, (202) 653-7200.

Dated: September 7, 2001.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 01-23045 Filed 9-10-01; 2:52 pm]

**BILLING CODE 7400-01-M**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice (01-109)]**

**NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee (ESSAAC); Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

**DATES:** Tuesday, October 16, 2001, 8:30 a.m. to 5:30 p.m.; and Wednesday, October 17, 2001, 8:30 a.m. to 5:30 p.m.

**ADDRESSES:** NASA Headquarters, 300 E Street SW, Room 9H40, Washington, DC, 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1876.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introduction/Comments

—State-of-the-Enterprise

—Sub-Committee Reports

Data & Information Sub-Committee report

Technology Sub-Committee report

—Budget Perspectives

Earth Science Enterprise (ESE) Budget Status

OMB Perspective

—Earth System Science Pathfinder (ESSP) Program Status Report

- Science Planning Update—Carbon Cycle Research
- Science Planning Update—Water & Energy Cycle Research
- Applications Strategic Planning Update
- Summary of first day
- Earth Science Information Partners (ESIP) Planning Status
- Overview of ESE Data Systems and Services
- New Data and Information Systems and Services (NewDISS) Strategic Planning Status
- ESE Response to President's Climate Change Research Initiative
- ESE Instrument Incubator Program
- General Discussion/Closing Remarks and Adjournment
- Committee Writing Session

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors' register.

**Beth M. McCormick,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 01-22838 Filed 9-11-01; 8:45 am]

**BILLING CODE 7510-01-P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice (01-111)]**

### **NASA Advisory Council, Minority Business Resource Advisory Committee Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

**DATES:** Thursday, October 11, 2001, 9:00 a.m. to 4:00 p.m., and Friday, October 12, 2001, 9:00 a.m. to 12:00 noon.

**ADDRESSES:** NASA Headquarters, 300 E Street, SW., Room 9H40, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room MIC 7 (A&B), 300 E Street, SW., Washington, DC 20546-0001, (202) 358-2088.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting
- Office of Small and Disadvantaged Business Utilization Update of Activities
- NAC Meeting Report
- Overview of NASA Enterprises and Functional Staff Offices
- Public Comment
- Panel Discussion and Review
- Goals for MBRAC V Review
- Status of Open Committee Recommendations
- New Business

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Beth M. McCormick,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 01-22840 Filed 9-11-01; 8:45 am]

**BILLING CODE 7510-01-P**

## **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[Notice (01-110)]**

### **U.S. Centennial of Flight Commission**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the U.S. Centennial of Flight Commission.

**DATES:** Thursday, October 4, 2001, 1:00 p.m. to 5:00 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, 300 E Street, SW., Room 9H40 (Program Review Center), Washington, DC 20546. Attendees must check in at the Security Desk to be cleared to the 9th floor conference room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Opening Comments
- Advisory Board Feedback
- Presentation by Mr. Ken Hyde, Experimental Aircraft Association
- Ohio Activities Update
- Outreach Plan
- Discussion
- Closing Comments

—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor register.

**Beth M. McCormick,**

*Advisory Committee Management Officer,  
National Aeronautics and Space Administration.*

[FR Doc. 01-22839 Filed 9-11-01; 8:45 am]

**BILLING CODE 7510-01-U**

## **NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

### **National Endowment for the Arts**

#### **Combined Arts Advisory Panel Meetings**

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Arts Learning section) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506 as follows:

Arts Learning Panel A: October 15-19, 2001, Room 716 (section 1) & Room 714 (section 2). A portion of this meeting, from 10 a.m. to 12 p.m. on October 19th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on October 15th-18th, from 9 a.m. to 10 a.m. and 12 p.m. to 4 p.m. on October 19th, will be closed.

Arts Learning Panel B: October 9-12, 2001, Room 716. A portion of this meeting, from 10:30 a.m. to 12 p.m. on October 12th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on October 9th, from 9 a.m. to 6:30 p.m. on October 13th-14th, and from 9 a.m. to 10 a.m. and 12 p.m. to 3 p.m. on October 12th, will be closed.

Arts Learning Panel C: October 22-26, 2001, Room 716. A portion of this meeting, from 2:45 p.m. to 4 p.m. on October 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 5:30 p.m. on October 22nd, from 9:30 a.m. to 6 p.m. on October 23rd-25th, and from 9 a.m. to 2:45 p.m. and 4 p.m. to 5 p.m. on October 26th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National

Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682-5691.

Dated: September 6, 2001.

**Kathy Plowitz-Worden,**

*Panel Coordinator.*

[FR Doc. 01-22819 Filed 9-11-01; 8:45 am]

**BILLING CODE 7537-01-P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

#### FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On July 17, 2001, the National Science Foundation published a notice in the **Federal Register** of a permit application received. Permits were issued on August 30, 2001 to:

Jerry L. Mullins—Permit No. 2002-001.  
Robert L. Pitman—Permit No. 2002-002.

Randall Davis—Permit No. 2002-003.

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 01-22901 Filed 9-11-01; 8:45 am]

**BILLING CODE 7555-01-M**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 30, Rules of General Applicability to Domestic Licensing of Byproduct Material—Revision to include burden for license conditions and additional burden for transferring a license.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. Reports are submitted upon license transfer or as events occur. Recordkeeping must be performed on an on-going basis.

5. *Who will be required or asked to report:* Persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

6. *An estimate of the number of responses:* 567 (162 responses for NRC licensees and 405 responses for Agreement State licensees).

7. *The estimated number of annual respondents:* 6552 (1872 NRC licensees and 4680 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 2131 (an average of 2 hours per response for 567 responses and 9 minutes for each of 6552 recordkeepers).

9. *An indication of whether section 3507(d), Pub. L. 104-13 applies:* Not applicable.

10. *Abstract:* The NRC's regulations in 10 CFR Part 30 establish rules, applicable to all persons in the United States, governing domestic licensing of radioactive byproduct material. The NRC has identified two Sections of 10 CFR Part 30 that contain burden that has not been previously captured in the supporting statement for 10 CFR Part 30. This burden is submitted as an addition to the current 10 CFR Part 30 clearance. In 10 CFR 30.34(b), the NRC requires the submittal of information that may not have been required on the previously submitted Form 313, "Application for Material License." In addition, 10 CFR 30.34(e)(4) permits the NRC to impose additional conditions in the license under certain circumstances. These conditions may require additional reporting and recordkeeping requirements. The conditions are used in conjunction with the requirements in Title 10 of the Code of Federal Regulations (10 CFR).

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: <http://www.nrc.gov/NRC/PUBLIC/OMB/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 12, 2001. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150-0017), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301-415-7233.

Dated at Rockville, Maryland, this 6th day of September 2001.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-22862 Filed 9-11-01; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket No. 40-9027; License No. SMC-1562]

**Removal of the Cabot Corporation, Inc., Site in Revere, Pennsylvania From the Cabot License and the Site Decommissioning Management Plan**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment.

This notice is to inform the public that the United States Nuclear Regulatory Commission (the Commission) is amending Source Material License SMC-1562 issued to Cabot Corporation, Inc. (Cabot, formerly Kawecki Chemical Company—Penn Rare Division, and Kawecki Berylco Industries) to remove the Revere, Pennsylvania, site. Cabot processed pyrochlore-bearing ores to extract columbium and tantalum metals for use in high-strength alloys and electronic component manufacture. The ore processing generated waste slag contaminated with natural uranium and thorium. The Commission is releasing the Cabot site in Revere, Pennsylvania, for unrestricted use, is removing the site from the Site Decommissioning Management Plan (SDMP), and is removing the site from License SMC-1562. In 1990, the Commission developed the SDMP program for sites that warranted special attention to ensure timely decommissioning. This list included the Cabot Revere site. Cabot has supplied, and the Commission has reviewed, site characterization and dose assessment information. Based on the Commission's review, the Commission concludes that the unrestricted release dose criteria in 10 CFR 20.1402 have been met. Therefore the Commission concludes that the site is suitable for release for unrestricted use, and the Revere site is being removed from the SDMP and License SMC-1562.

This termination will be reopened only if additional contamination is found indicating a significant threat to the health and safety of the public and the environment, or if the licensee had provided false information.

Dated at Rockville, Maryland, this 4th day of September, 2001.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 01-22865 Filed 9-11-01; 8:45 am]

**BILLING CODE 7590-01-P**

**NUCLEAR REGULATORY COMMISSION**

[Docket Nos. 50-277 and 50-278]

**Exelon Generation Company, LLC; PSEG Nuclear LLC, Atlantic City Electric Company; Peach Bottom Atomic Power Station, Unit Nos. 2 and 3; Exemption****1.0 Background**

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company (the licensees) are the holders of Facility Operating License Nos. DPR-44 and DPR-56 which authorize operation of the Peach Bottom Atomic Power Station (PBAPS), Unit Nos. 2 and 3. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of dual unit boiling water reactors located in York County in Pennsylvania.

**2.0 Request/Action**

Title 10 of the Code of Federal Regulations (10 CFR), Section 50.71 "Maintenance of records, making of reports," paragraph (e)(4) states, in part, that "Subsequent revisions [to the Updated Final Safety Analysis Report (UFSAR)] must be filed annually or 6 months after each refueling outage provided the interval between successive updates [to the UFSAR] does not exceed 24 months." The two units at PBAPS share a common UFSAR, therefore, this rule requires the licensees to update the same document annually or within 6 months after each unit's refueling outage. Since each unit is on a staggered 24 month refueling cycle, updating after each refueling outage also results in an annual update. Single unit sites using a 24 month refueling cycle would only be required to update the UFSAR on a 24 month periodicity. The proposed exemption would allow updates to the combined UFSAR for PBAPS, Unit Nos. 2 and 3, to be submitted within 6 months following completion of each PBAPS Unit 2 refueling outage, not to exceed 24 months from the previous submittal.

In summary, the licensees have requested an exemption that would allow updates to the PBAPS UFSAR at a periodicity not to exceed 24 months, similar to the periodicity permitted for single unit sites.

**3.0 Discussion**

Pursuant to 10 CFR 50.12, the Commission may, upon application by

any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The last change to 10 CFR 50.71(e)(4) was published in the **Federal Register** (57 FR 39358) on August 31, 1992, and became effective on October 1, 1992. The underlying purpose of the rule change was to relieve licensees of the burden of filing annual UFSAR revisions, especially if there had been no refueling outages since the previous revision. Most of the changes which lead to revision of the UFSAR occur during refueling outages. The revised 10 CFR 50.71(e)(4) also assured that such revisions are made at least every 24 months. However, as written, the burden reduction can only be realized by single-unit facilities, or multiple-unit facilities that maintain separate UFSARs for each unit. In the Summary and Analysis of Public Comments accompanying the 10 CFR 50.71(e)(4) rule change published in the **Federal Register** (57 FR 39355, 1992), the NRC acknowledged that the final rule did not provide burden reduction to multiple-unit facilities sharing a common UFSAR. The NRC stated: "With respect to the concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis." Granting this exemption would provide burden reduction to PBAPS while still assuring that revisions to the PBAPS UFSAR are made at least every 24 months.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that updating the PBAPS UFSAR within 6 months following completion of each PBAPS Unit 2 refueling outage, not to exceed 24 months from the previous submittal, meets the underlying purpose of 10 CFR 50.71(e)(4), since the PBAPS UFSAR would be updated at least every 24 months, similar to the UFSAR at a single unit site. The requirement to revise the UFSAR annually or within 6 months after the refueling outages for each unit, therefore, is not necessary to achieve the underlying purpose of the rule. In addition, the NRC previously acknowledged that the revision to 10 CFR 50.71(e)(4) did not directly address burden reduction for multiple-unit facilities that share a common UFSAR, but that such situations could be addressed on a case-by-case basis. The

NRC staff has reviewed the licensee's request and has concluded that application of the regulation in these circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2)(ii) special circumstances are present.

In addition, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

#### 4.0 Conclusion

Accordingly, the Commission hereby grants the licensees an exemption from the requirements of 10 CFR 50.71(e)(4) for PBAPS Unit Nos. 2 and 3, in that updates to the combined UFSAR for PBAPS, Unit Nos. 2 and 3, may be submitted within 6 months following completion of each PBAPS Unit 2 refueling outage, not to exceed 24 months from the previous submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 41054).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of September 2001.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-22866 Filed 9-11-01; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Notice of Public Meeting to Solicit Stakeholder Input on the Use of Risk Information in the Nuclear Materials and Waste Regulatory Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting

**SUMMARY:** The U.S. Nuclear Regulatory Commission's (NRC's) Office of Nuclear Materials Safety and Safeguards (NMSS) is developing an approach for using risk information in the nuclear materials and waste regulatory process. As part of this effort, the NRC staff conducted case studies on a spectrum of activities in the nuclear materials and waste arenas to (1) determine what has been done and what could be done in NMSS to alter

the regulatory approach in a risk-informed manner and (2) establish a framework for using a risk-informed approach in the materials and waste arenas by testing a set of draft screening criteria, and determining the feasibility of safety goals.

NRC staff is in the process of completing the case studies and finalizing the screening criteria. The staff is also beginning to formulate draft safety goals for materials and waste applications. The purpose of this meeting is to: (1) Present to stakeholders the integrated outcome of the case studies, including the final screening considerations and an early draft of safety goals, and (2) solicit recommendations and comments on how NRC should proceed with incorporating risk information into its regulatory framework. The tentative outline for the meeting is as follows:

1. Poster exhibition of case studies
2. Opening remarks
3. Discuss case study insights and integrated outcome
  - a. Final screening considerations
  - b. Process improvements
  - c. Tools, data, and methods
  - d. Draft safety goals
4. Receive comments, feedback, and recommendations
5. Closing remarks

The meeting is open to the public; all interested parties may attend and provide comments. Persons who wish to attend the meeting should contact Marissa Bailey no later than October 19, 2001.

**DATES:** The meeting will be held on October 25, 2001, from 9 a.m. to 4 p.m., in the U.S. Nuclear Regulatory Commission Auditorium, 11545 Rockville Pike, Rockville, MD 20852. From 8 a.m. to 9 a.m., a poster exhibition session will be held in the Auditorium lobby so that participants can discuss specific case study results with the staff.

**FOR FURTHER INFORMATION CONTACT:** Marissa Bailey, Mail Stop T-8-A-23, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-7648; Internet: MGB@NRC.GOV.

**SUPPLEMENTARY INFORMATION:** The NRC staff's case study approach, the draft screening criteria, and the case study areas under consideration are described in the "Plan for Using Risk Information in the Materials and Waste Arenas: Case Studies" which has been published in the **Federal Register** (65 FR 66782, November 7, 2000). Copies of this plan are also available on the Internet at <http://www.nrc.gov/NMSS/IMNS/>

[riskassessment.html](http://www.nrc.gov/NMSS/IMNS/riskassessment.html). Written requests for single copies of the case study plan and draft case study reports may also be submitted to the U. S. Nuclear Regulatory Commission, Office of Nuclear Materials Safety and Safeguards, Risk Task Group, Mail Stop T-8-A-23, Washington, DC 20555-0001.

Draft reports for each of the case studies will also be available on the Internet at <http://www.nrc.gov/NMSS/IMNS/riskassessment.html> by October 1, 2001.

Dated at Rockville, MD, this 6th day of September, 2001.

For the Nuclear Regulatory Commission.

**Lawrence E. Kokajko,**

*Section Chief, Risk Task Group, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 01-22864 Filed 9-11-01; 8:45 am]

BILLING CODE 7590-01-P

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 25151; 812-12596]**

### BHF Finance (Delaware) Inc.; Notice of Application

September 6, 2001

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

**SUMMARY OF APPLICATION:** Applicant, BHF Finance (Delaware) Inc. ("BHF Finance"), seeks an order to permit BHF Finance to sell securities and use the proceeds to finance the business activities of its prospective parent company, Deutsche Postbank ("Postbank"), and certain companies controlled by Postbank.

**FILING DATES:** The application was filed on July 30, 2001. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 27, 2001, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of

service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, Applicant, 590 Madison Avenue, New York, NY 10022.

**FOR FURTHER INFORMATION CONTACT:** John L. Sullivan, Senior Counsel, at (202) 942-0681, or Janet M. Grossnickle, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 (tel. 202-942-8090).

### Applicant's Representations

1. Postbank is a commercial bank organized under the laws of the Federal Republic of Germany ("Germany"). Postbank provides, directly or through its subsidiaries, a broad spectrum of financial services to corporations and private clients. Postbank has established itself as one of Germany's leading retail banks with consolidated total assets, as of December 31, 2000, of approximately DM 134 billion.

2. BHF Finance, a Delaware corporation, is the wholly-owned subsidiary of BHF (USA) Holdings, Inc. ("BHF Holdings"), a Delaware corporation, which is the wholly-owned subsidiary of BHF-Bank Aktiengesellschaft ("BHF-Bank"), BHF (USA) Capital Corporation ("BHF Capital"), a Delaware corporation that extends commercial credit to third parties, is also a wholly-owned subsidiary of BHF Holdings. Pursuant to a stock purchase agreement between BHF-Bank and Postbank, dated June 29, 2001, BHF-Bank will sell all of the issued and outstanding shares of common stock of BHF Holdings to Postbank. Upon the closing of this stock purchase agreement ("Closing"), Postbank will own all of the outstanding shares of common stock of BHF Holdings, and BHF Finance and BHF Capital will be indirect wholly-owned subsidiaries of Postbank.<sup>1</sup> Applicant anticipates the Closing to occur on September 30, 2001.

3. BHF Finance proposes to issue commercial paper in the United States pursuant to the exemption contained in section 3(a)(3) of the Securities Act of 1933 ("1933 Act"). BHF Finance may also offer debt securities other than commercial paper or non-voting preferred stock in the United States. After the Closing, BHF Finance intends to lend the proceeds to or invest the proceeds in Postbank, BHF Capital, and other companies controlled by Postbank within the meaning of rule 3a-5(b)(3) under the Act ("Controlled Companies"). Rule 3a-5 generally exempts finance subsidiaries of operating companies from the definition of investment company.

4. Any issuance of debt securities or non-voting preferred stock by BHF Finance will be guaranteed unconditionally by Postbank with a guarantee that meets the requirements of rule 3a-5(a)(1) or (2), respectively ("Guarantee"). In accordance with rule 3a-5(a)(5), at least 85% of any cash or cash equivalents raised by BHF Finance will be invested in or loaned to Postbank, Controlled Companies, and after the order requested by the application has been issued, BHF Capital, as soon as practicable, but in no event later than six months after BHF Finance's receipt of such cash or cash equivalents. In accordance with rule 3a-5(a)(6), all investments by BHF Finance, including temporary investments, will be made in Government Securities (as defined in the Act), securities of Postbank or of Controlled Companies and, after the order requested by the application has been issued, BHF Capital, or debt securities that are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

5. In connection with BHF Finance's offering of securities guaranteed by Postbank, Postbank will submit to the jurisdiction of the Supreme Court of New York or the Federal court located in the County of New York, State of New York and will appoint an agent to accept any process which may be served in any action based upon Postbank's obligations to BHF Finance as described in the application. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all accounts due and to become due with respect to securities issued by BHF Finance as described in the application have been paid.

### Applicant's Legal Analysis

1. BHF Finance requests relief under section 6(c) of the Act for an exemption from all provisions of the Act. Rule 3a-

5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

2. Rule 3a-5(b)(3)(i) in relevant part defines a "company controlled by the parent company" to be a corporation, partnership, or joint venture that is not considered an investment company under section 3(a) of the Act or that is excepted or exempted by order from the definition of investment company by section 3(b) of the Act or by the rules and regulations under section 3(a). Certain of Postbank's subsidiaries, after the Closing, will not fit within the definition of "companies controlled by the parent company" because they derive their non-investment company status from section 3(c) of the Act. In addition, after the Closing, Postbank will engage in certain activities (including certain investment activities) through BHF Capital. BHF Capital has no outstanding securities other than those owned indirectly by Postbank (excluding short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration). BHF Capital would be eligible for exemption under rule 3a-3 under the Act, except that Postbank is a foreign bank.<sup>2</sup> Accordingly, BHF Finance requests exemptive relief to permit it to lend the proceeds of its debt offerings to certain subsidiaries of Postbank that are excluded from the definition of investment company by virtue of section 3(c) and subsidiaries that would be excluded by virtue of rule 3a-3, but for Postbank's status as their parent company. BHF Finance states that, after the Closing, neither itself, nor Postbank, nor BHF Capital will engage primarily in investment company activities.

3. Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act

<sup>2</sup> Rule 3a-3 generally exempts an issuer from the definition of investment company if all of its outstanding securities (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are owned by an eligible parent company. A parent company generally is eligible if it meets certain asset and income tests and it is (i) not an investment company as defined in section 3(a) of the Act; (ii) excluded from the definition of investment company by section 3(b) of the Act; or (iii) deemed not to be an investment company under rule 3a-1 of the Act.

<sup>1</sup> After the Closing, BHF Finance and BHF Capital will change their names to PB Finance (Delaware) Inc. and PB (USA) Capital Corporation, respectively.

to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. BHF Finance submits that its exemptive request meets the standards set out in section 6(c).

#### Applicant's Condition

BHF Finance agrees that the order granting the requested relief will be subject to the following condition:

BHF Finance will comply with all of the provisions of rule 3a-5 under the Act, except paragraph (b)(3)(i) to the extent that BHF finance will be permitted to invest in or make loans to entities that do not meet the portion of the definition of "company controlled by the parent company" solely because they are:

(1) subsidiaries of Postbank that would be excluded from the definition of investment company by virtue of rule 3a-3 under the Act, but for Postbank's status as their parent company; or

(2) corporations, partnerships, and joint ventures that are excluded from the definition of investment company by section 3(c)(1), (2), (4), (6) or (7) of the Act, provided that any such entity:

(a) if excluded from the definition of investment company pursuant to section 3(c)(1) or section 3(c)(7) of the Act, will be engaged solely in lending, leasing or related activities (such as entering into credit derivatives to manage the credit risk exposures of its lending and leasing activities) and will not be structured as means of avoiding regulation under the Act; and

(b) if excluded from the definition of investment company pursuant to section 3(c)(6) of the Act, will not be engaged primarily, directly or indirectly, in one or more of the businesses described in section 3(c)(5) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-22858 Filed 9-11-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**Federal Register** citation of previous announcement: [to be published]

*Status:* Closed meeting.

*Place:* 450 Fifth Street, NW., Washington, DC.

*Date Previously Announced:* September 6, 2001.

*Change in the Meeting:* Time change.

The closed meeting scheduled for Tuesday, September 11, 2001 at 10 a.m. time has been changed to Tuesday, September 11, 2001, at 9:30 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942-7070.

Dated: September 10, 2001.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 01-22979 Filed 9-10-01; 12:03 pm]

**BILLING CODE 8010-01-M**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D-213]

### WTO Dispute Settlement Proceedings Regarding Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat products From Germany

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on August 8, 2001, the European Communities (EC) requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The request relates to countervailing duties imposed by the United States Department of Commerce (Commerce) with respect to the countervailing duty order on certain corrosion-resistant carbon steel flat products from Germany (corrosion-resistant steel order), and Commerce's decision not to revoke that order. The EC alleges that the decision not to revoke the order, as well as certain aspect of Commerce's sunset review procedure which led to the decision, are inconsistent with Articles 10, 11.9, 21 (notably paragraphs 1 and 3), and 32.5 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings,

comments should be submitted on or before October 12, 2001, to be assured of timely consideration by USTR.

**ADDRESSES:** Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508, Attn: Corrosion-Resistant Steel Dispute. Telephone: (202) 395-3582.

#### FOR FURTHER INFORMATION CONTACT:

William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508. Telephone: (202) 395-3582.

#### SUPPLEMENTARY INFORMATION:

Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the EC has requested the establishment of a dispute settlement panel pursuant to the WTO Dispute Settlement Understanding. Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

#### Major Issues Raised by the EC

In its sunset review of the corrosion-resistant steel order, Commerce determined that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies at a rate of 0.54 *ad valorem*. The EC alleges that this rate is below the 1 percent *de minimis* standard applicable to countervailing duty investigations of Article 11.9 of the SCM Agreement, which, the EC asserts, applies to sunset reviews. Accordingly, the EC alleges that Commerce's decision not to revoke the order was inconsistent with Article 11.9. In addition, the EC alleges that because Commerce did not demonstrate that subsidies would increase above the *de minimis* level if the order were revoked, Commerce acted inconsistently with Article 21.3 of the SCM Agreement.

The EC also alleges that certain provisions of U.S. countervailing duty law authorizing the self-initiation of sunset reviews by Commerce are inconsistent with Article 21.3. Specifically, the EC refers to section 751(c) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(c), and section 351.218 of Commerce's regulations, 19 C.F.R. 351.218. According to the EC,

investigating authorities may self-initiate sunset reviews only on the basis of a similar level of positive evidence as would be required if a domestic industry requested the initiation of a sunset review.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked **BUSINESS CONFIDENTIAL** in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as **SUBMITTED IN CONFIDENCE** in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-213, Corrosion-Resistant Steel Dispute) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 9:30

a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 01-22825 Filed 9-11-01 8:45 am]

BILLING CODE 3190-01-M

#### OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D-212]

#### WTO Dispute Settlement Proceedings Regarding Countervailing Duty Measures Concerning Certain Products From the European Communities

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that on August 8, 2001, the European Communities (EC) requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The request relates to the continued application by the United States of countervailing duties based upon the "change-in-ownership" methodologies used by the U.S. Department of Commerce (Commerce). The EC alleges that the methodologies used by Commerce in certain identified countervailing duty proceedings is inconsistent with various provisions of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), and Article XVI:4 of the WTO Agreement. The EC also alleges that section 771(5)(F) of the Tariff Act of 1930, as amended, 19 U.S.C. 1677(5)(F), is also inconsistent with these provisions to the extent that it allows Commerce to apply the disputed methodologies. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 12, 2001, to be assured of timely consideration by USTR.

**ADDRESSES:** Submit comments to Sandy McKinzy, Monitoring and Enforcement Unit, Office of the General Counsel, Room 122, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, Attn: Change in Ownership in Methodology Dispute. Telephone: (202) 395-3582.

#### FOR FURTHER INFORMATION CONTACT:

William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. Telephone: (202) 395-3582.

**SUPPLEMENTARY INFORMATION:** Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the EC has requested the establishment of a dispute settlement panel pursuant to the WTO Dispute Settlement Understanding. Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

#### Major Issues Raised by the EC

In its panel request, the EC alleges that in United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, WT/DS138/AB/R ("U.K. Lead Bar"), the WTO Appellate Body found the change-in-ownership methodology applied by Commerce for purposes of the U.S. countervailing duty law to be inconsistent with the SCM Agreement. The EC also alleges that the Appellate Body found that a change of ownership at fair market value eliminated the benefit of any prior subsidies to the privatized company. Therefore, the EC alleges that the continued application by Commerce of the change-in-ownership methodology at issue in U.K. Lead Bar, and the continued imposition of countervailing duties based upon that methodology, is consistent with Articles 1.1, 10 (including footnote 36), 14(d), 19.1, 19.3, 19.4, 21.1, 21.2, 21.3, and 32.5 of the SCM Agreement, and Article XVI:4 of the WTO Agreement. According to the EC in its panel request, this pre-U.K. Lead Bar methodology "fails to examine whether there is a subsidy to the producer concerned in circumstances where a financial contribution was granted to a previous owner of a company or its productive assets and there has been a change of ownership or privatization thereof at arm's-length for fair market value."

Following the Appellate Body report in U.K. Lead Bar and a related decision by the U.S. Court of Appeals for the Federal Circuit, Commerce revised its change-in-ownership methodology. Under its new methodology, Commerce

examines whether the entity existing after a change-in-ownership transaction is the same legal person that existed prior to the transaction and that received subsidies. The EC alleges that this new methodology also is inconsistent with the provisions of the SCM Agreement and the WTO Agreement cited above. According to the EC in its panel request, this methodology "ignores the consideration paid by the current producer in the privatisation or change of ownership, instead purporting to undertake an analysis of whether the buyer is 'for all intents and purposes' the 'same person' as the company which had received a financial contribution before privatisation."

The measures identified by the EC (including the relevant Commerce case number) are as follows:

- Original Imposition of Countervailing Duties
  - Stainless Steel Sheet and Strip in Coils from France (C-427-815)
  - Certain Cut-to-Length Carbon Quality Steel from France (C-427-817)
  - Stainless Steel Sheet and Strip in Coils from Italy (C-475-825)
  - Certain Stainless Steel Wire Rod from Italy (C-475-821)
  - Stainless Steel Plate in Coils from Italy (C-475-823)
  - Certain Cut-to-Length Carbon-Quality Steel Plate from Italy (C-475-827)
- Administrative Reviews
  - Cold-rolled Carbon Steel Flat Products from Sweden (C-401-401)
  - Cut-to-Length Carbon Steel Plate from Sweden (C-401-804)
  - Grain-Oriented Electrical Steel from Italy (C-475-812)

(With respect to case C-475-812, the EC panel request refers to a "Definitive determination in administrative review 2nd request; final sunset results ...").

- Sunset Reviews
  - Cut-to-Length Carbon Steel Plate from the United Kingdom (C-412-815)
  - Certain Corrosion-Resistant Carbon Steel Flat Products from France (C-427-810)
  - Cut-to-Length Carbon Steel Plate from Germany (C-428-817)
  - Cut-to-Length Carbon Steel Plate from Spain (C-469-804)

In addition, the EC also cites section 771(5)(F) of the Tariff Act of 1930, as amended, which is entitled "Change in ownership". According to the EC in its panel request, section 771(5)(F) is inconsistent with the provisions of the SCM Agreement and the WTO Agreement cited above "to the extent

that it allows [Commerce] to impose countervailing duties without assessing the existence of a countervailable subsidy after a privatisation or change of ownership ... ."

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked **BUSINESS CONFIDENTIAL** in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155 (g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as **SUBMITTED IN CONFIDENCE** in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537 (e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D-212, Change in Ownership Methodology Dispute) may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public

from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

**A. Jane Bradley,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. 01-22826 Filed 9-11-01; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent To Rule on Application (01-07-I-00-YKM) To impose a passenger facility charge (PFC) at Yakima Air Terminal-McAllister Field, submitted by the Yakima Air Terminal Board, Yakima Air Terminal-McAllister Field, Yakima, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Yakima Air Terminal-McAllister Field under the provision of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulation (14 CFR part 158).

**DATES:** Comments must be received on or before October 12, 2001.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bob Clem, Airport Manager, at the following address: 2400 West Washington Avenue, Yakima, Washington 98903.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yakima Air Terminal-McAllister Field, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington, 98055. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application 01-07-I-00-YKM to impose a PFC at Yakima Air Terminal-McAllister Field, under the provisions of 49 U.S.C. 40117 and part

158 of the Federal Aviation Regulations (14 CFR part 158).

On September 5, 2001, the FAA determined that the application to impose a PFC, submitted by Yakima Air Terminal Board, Yakima, Washington, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 8, 2001.

The following is a brief overview of the application.

*Level of the proposed PFC:* \$3.00.

*Proposed charge effective date:* February 1, 2002.

*Proposed charge expiration date:* February 1, 2004.

*Total requested for impose authority:* \$456,000.

*Brief description of proposed project:* Runway 27 Safety Area Improvement, Phase II.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* air taxi/commercial operators enplaning less than 1% of airport's total enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Yakima Air Terminal-McAllister Field.

Issued in Renton, Washington, on September 5, 2001.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 01-22914 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2000-8105; Notice 2]

#### Accuride Corporation; Grant of Application for Decision of Inconsequential Noncompliance

Accuride Corporation of Evansville, Indiana, a manufacturer of truck rims and wheels, has determined that approximately 3,700 20 × 7.5 FL side rings produced by Accuride de Mexico (AdM), Accuride's wholly-owned

subsidiary, at its Monterrey, Mexico plant, and by Industria Automotriz S.A. de C.V. (IaSa), a Mexican corporation and Accuride's Mexican joint venture partner, fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars." Accuride filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Accuride has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on March 2, 2001, in the **Federal Register** (66 FR 13126). NHTSA received no comments.

The purpose of FMVSS No. 120, according to S2, is "to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires of adequate size and load rating and with rims of appropriate size and type designation." Paragraph S5.2 of FMVSS No. 120 requires that each piece, other than the rim base of a multipiece rim, be marked with specific information, including the rim size designation, and a designation that identifies the manufacturer of the rim by name, trademark, or symbol.

Accuride's noncompliance relates to the mis-stamping of the marking on the multipiece rim rings. The stamped rim size designation and type designation on the ring, was transposed as "R7.5 × 20 FL" instead of "20 × 7.5 FL." Accuride states, "All other stampings and markings required by FMVSS 120 and Accuride, including the part number and load rating, are correctly identified on each of the components in question." AdM produced a total of approximately 896 rings from January 3, 2000 to February 18, 2000, and approximately 2,804 rings were produced by IaSa and sold by Accuride prior to January 3, 2000. Accuride believes that there is no safety-related issue with respect to this equipment.

These rings, marked with transposed numbers, were sent to original equipment manufacturers and were fitted to Class 8 conventional trucks and trailers. Accuride argues that an individual in a heavy truck repair facility would quickly realize that this marking is incorrect and would be unlikely to attempt to fit this ring on a rim of the size marked. The probability of one of these rings being placed on a rim by an individual believing that the marking is correct is highly unlikely, if not physically impossible, would be

attempting to fit a 20-inch diameter ring on to a 7.5-inch diameter base rim.

According to the petitioner, senior Accuride management has extensively reviewed the processes, the causes of these noncompliances have been isolated, and changes in the processes have been instituted to prevent any future occurrences. In addition, the noncompliance is limited to the equipment addressed in this notice, and Accuride stated that its future products would comply with the requirements of FMVSS No. 120.

The agency agrees with Accuride's verbal statements, provided in a telephone conversation, that an individual working in a heavy truck repair shop or tire shop would quickly realize that the size on the ring is mislabeled by examining the matching rim and mounted tire. Accuride provides the correct size information; however, that information is transposed. These rings and matching rims will be serviced in Class 8 capable facilities with trained heavy truck personnel. The probability of these rings being placed on a rim by a trained individual believing that the marking is correct is remote.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Accuride's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

(49 U.S.C. 30118; delegations of authority at 49 CFR 1.50 and 501.8).

Issued on: September 7, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01-22849 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2001-9116; Notice 2]

#### Hankook Tire Corporation; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Hankook Tire Manufacturing Company, Ltd. (Hankook), a Korean corporation, has determined that approximately 7,600 P205/75R14 Dayton Thorobred tires, produced in the Hankook Daejun Plant during August

2000 through January 2001, do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Hankook has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety. It has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of application was published, with a 30-day comment period, on April 3, 2001, in the **Federal Register** (66 FR 17747). NHTSA received no comments on this application.

The noncompliance with FMVSS No. 109, paragraph S4.3 (a) relates to a mismarking of the tire size on one mold, Serial Number 24383. The actual stamping in the bead area of the DOT serial side (normally mounted in-board) is P205/75R15 and the correct stamping should have been P205/75R14, which is stamped on the customer side of the tires (normally mounted outboard).

Hankook stated that the estimated 7,600 affected P205/75R14 Dayton Thorobred tires meet all other requirements of FMVSS No. 109. According to Hankook, there is a larger, predominant P205/75R14 correct marking on the mid-sidewall of both sides of the tires and the tire labels supplied to tire dealers with the tires are also marked with the correct tire size information. Furthermore, Hankook stated that an attempt by the company to mount the P205/75R14 tire on a 15-inch rim was unsuccessful since the mounting machine could not apply sufficient force to accomplish the mismatch. Hankook submitted that it was unaware of any adverse effects of this noncompliance and, as a result, believes the noncompliance is inconsequential to motor vehicle safety.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on tire and rim safety. Tire and rim safety would be adversely affected if these tires, which are 14 inches in diameter, were to be mounted on 15-inch rims. Hankook stated in its petition for inconsequential noncompliance that the tires are mislabeled on one side only, the DOT serial side, which is generally mounted in-board. In addition to the labeling information in the bead area required by FMVSS No. 109, the tire size is marked in large characters in the mid-sidewall area. According to Hankook, these mid-sidewall tire size markings on both sides of the tires are correct and the new tire label supplied to tire dealers with the

tires is also marked with the correct tire size. Since the tire size is marked incorrectly in one location (in-board bead) only, and correctly marked in several other locations, the agency believes it is highly unlikely that the tire size could be misunderstood by a tire service technician. According to Hankook, an attempt to mount one of these 14-inch tires on a 15-inch rim was unsuccessful because the tire-mounting machine could not generate sufficient force to mount the tire on an oversized rim. The agency believes it would highly unlikely that 14-inch diameter tires could be mounted on 15-inch rims in the event they were mistaken to be 15-inch tires. The agency has no knowledge of safety problems that have arisen as a result of tire size mislabeling when the incorrect label indicated that the tire was larger than its actual size. Based on the information provided by Hankook, the agency believes the noncompliance is inconsequential to motor vehicle safety.

In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Hankook's application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 7, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01-22850 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2000-8557; Notice 2]

#### Uniroyal Goodrich Tire Manufacturing; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Uniroyal Goodrich Tire Manufacturing (Uniroyal) has determined that a total of 284 P205/60R15 Regul Sport Challenger passenger tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Uniroyal has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published, with a 30-day comment period, on January 4, 2001, in the **Federal Register** (66 FR 845). NHTSA received no comments on this application.

FMVSS No. 109, paragraph S4.3(d), requires that each tire have permanently molded into or onto both sidewalls the generic name of each cord material used in the plies (both sidewall and tread area) of the tire. Paragraph S4.3(e) requires that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different.

The noncompliance with paragraph S4.3 (d) and (e) involves tires that were marked: Tread Plies: 2 Polyester + 2 Steel + 1 Nylon, Sidewall Plies: 2 Polyester, instead of the correct marking of: Tread Plies: 1 Polyester + 2 Steel, Sidewall Plies: 1 Polyester.

Uniroyal states that of the total (284) tires produced, no more than 17 may have been delivered to end users. The remaining tires have been isolated in their warehouses and are being scrapped. Uniroyal does not believe that this marking error will impact motor vehicle safety because the tires meet all applicable Federal motor vehicle safety standards.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to Section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments addressing the ANPRM, which sought comments on the tire labeling information required by 49 CFR part 571.109 and 119, part 567, part 574, and part 575. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction (number of plies and type of ply cord material in the tread and sidewall) labeling requirements of FMVSS 109, paragraphs S4.3 (d) and (e), most commenters indicated that the information was of little or no safety

value to consumers. However, the tire construction information is valuable to the tire re-treading, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc. (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire and to select proper retread, repair, and recycling procedures.

In addition to the written comments solicited by the ANPRM, the agency conducted a series of focus groups, as required by TREAD, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire label information beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we concur that it is likely that few consumers are influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when making a motor vehicle or tire purchase decision. However, the tire repair, retread, and recycling industries do use the tire construction information.

The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgement, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. The agency believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety

concern of these industries, according to ITRA. In this case, the steel used in the construction of the tires is properly labeled.

In consideration of the foregoing, NHTSA has decided that the applicant has met the burden of persuasion and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Uniroyal's application is granted and the applicant is exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 7, 2001.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 01-22848 Filed 9-11-01; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 6, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before October 12, 2001 to be assured of consideration.

### Departmental Offices/Community Development Financial Institutions Fund

*OMB Number:* 1559-0005.

*Form Number:* CDFI-0002.

*Type of Review:* Reinstatement.

*Title:* Bank Enterprise Award (BEA) Program Application and Final Report.

*Description:* The CDFI Fund implements a Bank Enterprise Award Program that provides incentives to insured depository institutions to increase their support of CDFIs and their activities in economically distressed communities.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 200.

*Estimated Burden Hours Per Recordkeeper:*

Application—10 hours.

Final Report—7 hours.

*Frequency of Response:* On occasion.

*Estimated Total Recordkeeping Burden:* 3,400 hours.

*OMB Number:* 1559-0007.

*Form Number:* CDFI-0003.

*Type of Review:* Reinstatement.

*Title:* Presidential Awards for Excellence in Microenterprise Development.

*Description:* The Community Development Financial Institutions (CDFI) Fund implements the Presidential Awards of Excellence in Microenterprise Development Program to recognize outstanding microenterprise development and support organizations and to advance an understanding of "best practices in the field of microenterprise development and bring wider attention to its importance.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 80.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:* 35 hours.

*Frequency of Response:* Annually.

*Estimated Total Recordkeeping Burden:* 2,800 hours.

*OMB Number:* 1559-0008.

*Form Number:* CDFI-0014.

*Type of Review:* Reinstatement.

*Title:* Bank Enterprise Award (BEA) Program Annual Survey.

*Description:* The CDFI Fund's BEA Program helps to promote economic revitalization and community development through an incentive system for insured depository institutions to, among other things, increase their lending to and investment in CDFIs by rewarding participating institutions with awards.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 180.

*Estimated Burden Hours Per Recordkeeper:* 30 minutes.

*Frequency of Response:* Annually.

*Estimated Total Recordkeeping Burden:* 90 hours.

*Clearance Officer:* Lois K. Holland, (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*  
[FR Doc. 01-22859 Filed 9-11-01; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 4, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before October 12, 2001 to be assured of consideration.

#### Internal Revenue Service

*OMB Number:* 1545-0150.

*Form Number:* IRS Form 2848.

*Type of Review:* Extension.

*Title:* Power of Attorney and Declaration of Representative.

*Description:* Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons. Also used to input representative on CAF (Central Authorization File).

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms.

*Estimated Number of Respondents/Recordkeepers:* 800,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—19 min.  
Learning about the law or the form—28 min.  
Preparing the form—29 min.  
Copying, assembling, and sending the form to the IRS—34 min.

*Frequency of Response:* Annually.  
*Estimated Total Reporting/Recordkeeping Burden:* 1,504,000 hours.

*OMB Number:* 1545-0531.

*Form Number:* IRS Form 70-NA.

*Type of Review:* Revision.

*Title:* United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Non-Resident Not a Citizen of the United States.

*Description:* Under section 6018, executors must file estate tax returns for nonresident noncitizens who had property in the United States. Executors use Form 706-NA for this purpose. IRS uses the information to determine correct tax and credits.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—1 hr., 38 min.  
Learning about the law or the form—40 min.  
Preparing the form—1 hr., 58 min.  
Copying, assembling, and sending the form to the IRS—54 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 4,607 hours.

*OMB Number:* 1545-1119.

*Form Number:* IRS Forms 8804, 8805 and 8813.

*Type of Review:* Extension.

*Title:* Form 8804: Annual Return for Partnership Withholding Tax (Section 1446); Form 8805: Foreign Partner's Information Statement of Section 1446 Withholding Tax; and Form 8813: Partnership Withholding Tax Payment Voucher (Section 1446)

*Description:* Code section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income allocable to foreign partners. Forms 8804, 8805 and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Form	8804 (min.)	8805 (min.)	8813 (min.)
Recordkeeping ..	58	58	26
Learning about the law or the form .....	57	54	49
Preparing the form .....	30	16	15
Copying, assembling, and sending the form to the IRS .....	20	16	10

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 121,200 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*  
[FR Doc. 01-22860 Filed 9-11-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

September 6, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before October 12, 2001 to be assured of consideration.

#### Internal Revenue Service

*OMB Number:* 1545-0128.

*Form Number:* IRS Form 1120-L.

*Type of Review:* Revision.

*Title:* U.S. Life Insurance Company Income Tax Return.

*Description:* Life Insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 2,440.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—83 hr., 27 min.  
Learning about the law or the form—27 hr., 57 min.  
Preparing the form—48 hr., 13 min.  
Copying, assembling, and sending the form to the IRS—5 hr., 5 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 401,966 hours.

OMB Number: 1545-1343.  
Regulation Project Number: PS-100-88 Final.

Type of Review: Extension.

Title: Valuation Tables.

Description: The regulations require individuals or fiduciaries to report information on Forms 706 and 709 in connection with the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1545-1361.

Regulation Project Number: PS-89-91.

Type of Review: Extension.

Title: Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

Description: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. This regulation provides reporting and recordkeeping rules.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,305.

Estimated Burden Hours Per Respondent/Recordkeeper: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 201 hours.

OMB Number: 1545-1362.

Form Number: IRS Forms 8835.

Type of Review: Extension.

Title: Renewable Electricity Production Credit.

Description: Filers claiming the general business credit for electricity

produced from certain renewable resources under code section 38 and 45 must file 8835.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 70.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—11 hr., 14 min.

Learning about the law or the form—24 min.

Preparing and sending the form to the IRS—35 min.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting/Recordkeeping Burden: 857 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 01-22861 Filed 9-11-01; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

[Docket No. 928; ATF O 1130.20]

#### Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 170, Miscellaneous Regulations Relating to Liquor

To: All Bureau Supervisors

1. **PURPOSE.** This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with

whom persons file documents which are not ATF forms.

2. **CANCELLATION.** This order cancels ATF O 1100.85B, Delegation Order—Delegation to the Associated Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 170, Miscellaneous Liquor Regulations.

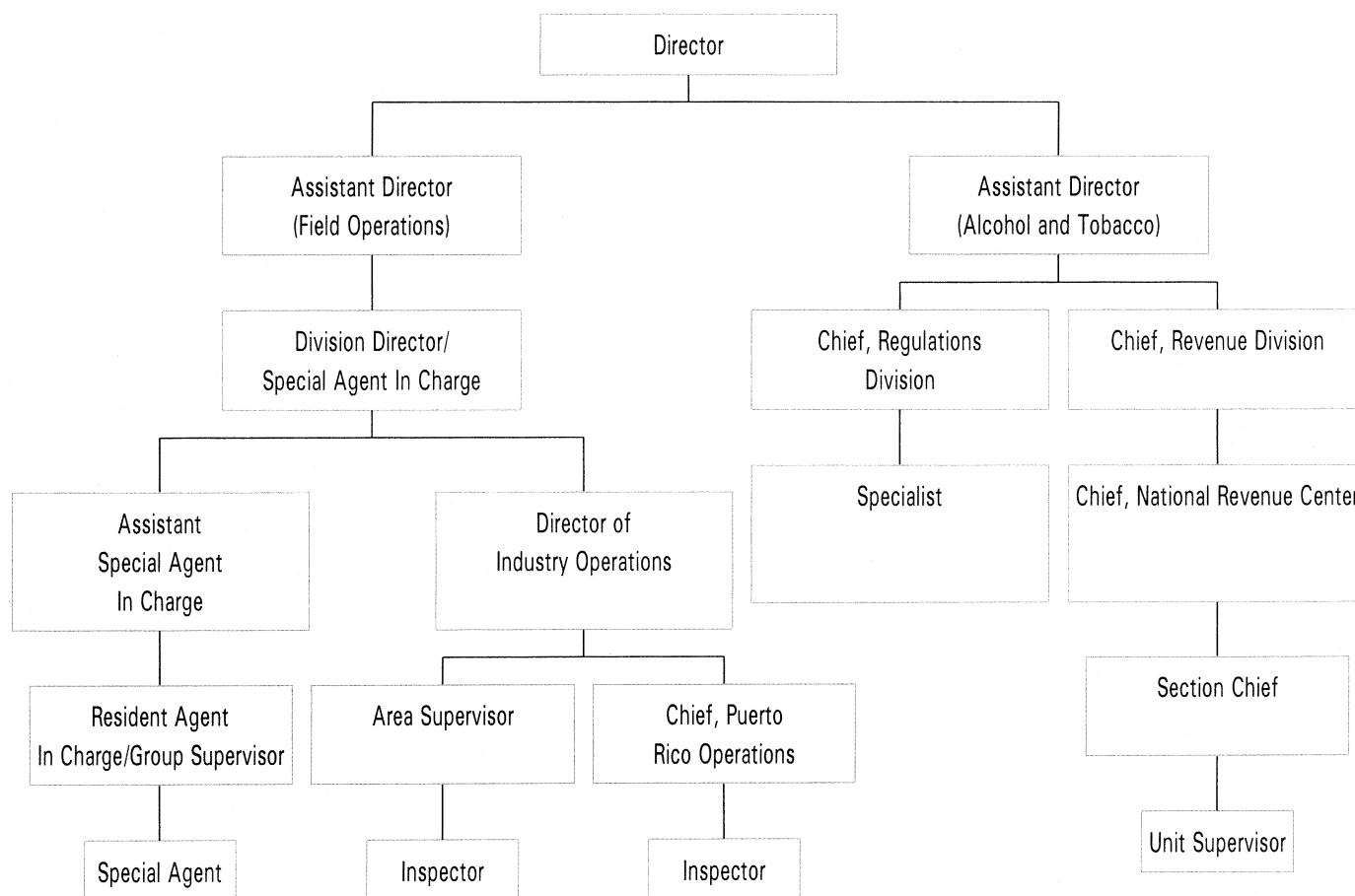
3. **BACKGROUND.** Under current regulations, the Director has authority to take final action on matters relating to the manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements established under Chapter 51 of the Internal Revenue Code of 1986. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. **DELEGATIONS.** Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120-1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701-9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 170 to subordinate officers. Also, this ATF Order prescribes the subordinate ATF officers with whom applications, notices, and reports required by 27 CFR part 170, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

5. **QUESTIONS.** Any questions concerning this order should be directed to the Regulations Division at 202-927-8210.

**Bradley A. Buckles,**  
Director.

## ATF Organization Chart



This is not a complete organizational chart of ATF

[FR Doc. 01-22847 Filed 9-11-01; 8:45 am]

BILLING CODE 4810-31-C

### DEPARTMENT OF THE TREASURY

#### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 10574

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 10574, Community Based Outlet Program.

**DATES:** Written comments should be received on or before November 13, 2001 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Community Based Outlet Program.

*OMB Number:* 1545-1753.

*Form Number:* Form 10574.

*Abstract:* Form 10574 will be used by both internal and external customers to provide contact information for follow up by Community Based Outlet Program

(CBOP) representatives. The form may be utilized as an order blank or as a request for additional information. The form will indicate to the customer service representatives what products the customer wants to receive or the subject matter of additional information. The form would be returned to the Western Area Distribution Center by mail or fax for processing.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and state, local or tribal governments.

*Estimated Number of Responses:* 500.

*Estimated Time Per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 42.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01-22935 Filed 9-11-01; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF TREASURY

### Internal Revenue Service

#### Internal Revenue Service Advisory Council; Nomination

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Request for nominations.

**SUMMARY:** The Internal Revenue Service (IRS) requests nominations of individuals to be considered for selection as Internal Revenue Service Advisory Council (IRSAC) members. Interested parties may nominate themselves and/or at least one other qualified person for membership. Nominations will be accepted for current vacancies and vacancies that will or may occur during the next twelve (12) months, and should describe and document the applicant's qualifications for membership. Comprised of twenty-three (23) members, approximately half of these

IRSAC appointments will expire in 2001. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on an applicant's qualifications as well as the segment or group he/she represents.

**DATES:** Written nominations must be received on or before September 30, 2001.

**ADDRESSES:** Nominations should be sent to Ms. Lorenza Wilds, National Public Liaison, CL:NPL:PAC, Room 7565 IR, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attn: IRSAC Nominations; e-mail:

\*[public\\_liaison@irs.gov](mailto:public_liaison@irs.gov). Applications may be submitted by mail to the address above or faxed to 202-927-5253.

However, if submitted vis-à-vis facsimile, the original application must be received by mail, as National Public Liaison cannot consider an applicant nor process his/her application prior to receipt of an original signature.

Application packages are available on the Tax Professional's Corner and Small Business Corner, which are located on the IRS' Internet Web site at [http://www.irs.gov/prod/bus\\_info/tax\\_pro/index.html](http://www.irs.gov/prod/bus_info/tax_pro/index.html) and [http://www.irs.gov/prod/bus\\_info/sm\\_bus/index.html](http://www.irs.gov/prod/bus_info/sm_bus/index.html) respectively. Application packages may also be requested by telephone from National Public Liaison, 202-622-6440.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorenza Wilds, 202-622-6440 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

Authorized under the Federal Advisory Committee Act, Public Law No. 92-463, the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (CAG)—was established in 1953 as a “national policy and/or issue advisory committee.” Renamed in 1998 to reflect the agency-wide scope of its focus as an advisory body, the IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. As such, the IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the Commissioner with respect to issues having substantive effect on federal tax administration. The commentary and assistance provided by the IRSAC

during the recent IRS modernization effort were particularly helpful, and it is contemplated that similar significance will attach to the Council's advice in addressing new challenges as the restructured IRS moves forward.

Conveying the public's perception of IRS activities to the Commissioner, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds to bear on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, state tax administration, and the payroll community.

IRSAC members are appointed by the Commissioner and serve a term of two years, with the possibility of a one-year renewal, subject to the Commissioner's approval. The Commissioner determines the size of the IRSAC and the organizations represented on the Council. Working groups that mirror the reorganized IRS address policies and administration issues specific to the four Operating Divisions. While Council members are not paid for their time or services, members residing outside of the Washington, DC metropolitan area will be reimbursed for travel-related expenses incurred to attend an average of two public meetings and one orientation session per year; in accordance with 5 U.S.C. 5703. IRSAC members, their employers, or their sponsoring associations/organizations are responsible for travel-related expenses to all scheduled working sessions or other meetings.

Receipt of nominations will be acknowledged, nominated individuals contacted, and immediately thereafter, biographical information must be completed and returned to Ms. Lorenza Wilds in National Public Liaison within fifteen (15) days of receipt. In accordance with Department of Treasury Directive 21-03, a clearance process including, *inter alia*, pre-appointment and annual tax checks, a Federal Bureau of Investigation criminal and subversive name check, and a security clearance will be conducted.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. To ensure that the recommendations of the IRSAC have taken into account the needs of the diverse groups served by the IRS, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Dated: September 4, 2001.

**Cathy VanHorn,**

*Designated Federal Official, Acting Director,  
National Public Liaison.*

[FR Doc. 01-22800 Filed 9-11-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of Citizen Advocacy Panel, Midwest District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** A meeting of the Midwest Citizen Advocacy Panel will be held in Milwaukee, Wisconsin.

**DATES:** The meeting will be held Wednesday, September 26, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Sandra McQuin at 1-888-912-1227 (in Wisconsin, Iowa, Nebraska and Illinois), or 414-297-1604.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Wednesday, September 26, 2001, from 8:00 a.m. to Noon at the Hyatt Regency Hotel, 333 West Kilbourn Avenue, Milwaukee, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving

customer service at the Internal Revenue Service. Public comments will be welcome during the meeting, or you can submit written comments to the panel by faxing to (414) 297-1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203-2221.

The Agenda will include the following: Introduction of new panel members, miscellaneous reports.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 5, 2001.

**Cindy Vanderpool,**

*Acting Director, CAP, Communication and Liaison.*

[FR Doc. 01-22797 Filed 9-11-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open meeting of Citizen Advocacy Panel, Pacific Northwest Panel

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Fairbanks, Alaska.

**DATES:** The meeting will be held Friday September 21, 2001 and Saturday September 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** Judi L. Nicholas at 1-888-912-1227 or 206-220-6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday January 12, 2001, from 9:00 a.m. to 4:30 p.m. at the Federal Building located at 101 12th Avenue, Fairbanks, AK, 99701; Saturday, September 22, 2001, from 9:30 a.m. to 12:30 p.m. at the Fairbanks Public Library located at 1215 Cowles Street, Fairbanks, AK. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write Judi L. Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi L. Nicholas. Ms. Nicholas can be reached at 1-888-912-1227 or 206-220-6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: September 5, 2001.

**Cindy Vanderpool,**

*Acting Director, CAP, Communications and Liaison.*

[FR Doc. 01-22798 Filed 9-11-01; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Wednesday,  
September 12, 2001**

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## **Part II**

### **Federal Emergency Management Agency**

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**Radiological Emergency Preparedness:  
Exercise Evaluation Methodology and  
Alert and Notification; Notices**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Radiological Emergency Preparedness: Exercise Evaluation Methodology.

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is revising the Radiological Emergency Preparedness Exercise Manual (REP-14) dated September 1991 by adopting the six Exercise Evaluation Areas described in this notice in place of the 34 REP-14 Objectives that are set out in Section D of REP-14. The minimum frequency with which each of the Exercise Evaluation Areas will be evaluated is also contained in this notice. Adoption of the changes to REP-14 renders a companion manual entitled Radiological Emergency Preparedness Exercise Evaluation Methodology (REP-15) dated September 1991 obsolete. FEMA is rescinding REP-15 and will utilize a new form entitled "Evaluation Module" to document evaluations conducted under the new criteria.

**DATES:** This notice is effective on October 1, 2001. Exercises conducted pursuant to 44 CFR § 350.9 between October 1, 2001 and December 31, 2001 may be (a) evaluated under the 34 Objectives enumerated in the September 1991 version of REP-14 and utilizing the points of review set out in REP-15 or (b) evaluated under the new criteria using the Evaluation Module form. The decision on which to use will be made by the appropriate FEMA Regional Assistance Committee Chair after consulting with the affected State or States. Effective January 1, 2002, exercises conducted pursuant to 44 CFR § 350.9 shall be evaluated using the criteria described in this notice and shall be documented using the Evaluation Module form. The 34 Objectives enumerated in the September 1991 version of REP-14 and the points of review set out in REP-15 shall not be used in exercises that take place on or after January 1, 2002.

#### FOR FURTHER INFORMATION CONTACT:

Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Hazards Division, Federal Emergency Management Agency, 500 C Street SW, Washington DC 20472; telephone: (202) 646-3664; e-mail: [vanessa.quinn@fema.gov](mailto:vanessa.quinn@fema.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) is revising the Radiological

Emergency Preparedness Exercise Manual (REP-14) dated September 1991 by adopting the six Exercise Evaluation Areas described in this notice and deleting the thirty-four REP-14 Objectives that are set out in Section D of REP-14.<sup>1</sup> This is an interim measure. FEMA is currently working on a REP Handbook, a comprehensive compilation of REP guidance. The REP Handbook will incorporate the new Exercise Evaluation Areas and portions of REP-14 that pertain to the conduct of exercises. When the new reference book is issued, REP-14 will be withdrawn.

Adoption of the new Evaluation Areas renders a companion manual entitled Radiological Emergency Preparedness Exercise Evaluation Methodology (REP-15) dated September 1991 obsolete. The "Evaluation Module" will be used to document exercise evaluations carried out under the new evaluation areas.<sup>2</sup> REP-15 is rescinded effective January 1, 2002, which is the date upon which all exercises will be evaluated in accordance with the new criteria.

FEMA published the proposed evaluation areas and the Evaluation Module in the **Federal Register** on June 11, 2001 for sixty days of public comment [66 FR 31342]. The public comment period closed on August 10, 2001. Eighty-three comments were submitted by the deadline. The majority of comments were submitted by representatives of State and local public health, environmental and emergency management agencies. FEMA also received comments from licensees of nuclear power plants, the general public and a public interest group. We found the comments to be thoughtful and constructive.

Pursuant to a Memorandum of Understanding between FEMA and the Nuclear Regulation Commission (NRC), 44 CFR 353 App. A (2000 edition), FEMA provides the NRC with an opportunity to review and comment on emergency planning and preparedness guidance issued by FEMA's Radiological Emergency Preparedness (REP) program. The NRC was provided with a copy of the **Federal Register** notice and asked to provide comments. The NRC staff provided comments on August 10, 2001.

<sup>1</sup> Adoption of the proposed Evaluation Criteria renders much of Section C.2 of REP-14 obsolete. Pages C.2-3 and C.2-4 of REP-14 speak to the frequency with which particular REP-14 objectives will be exercised. FEMA is adopting the Federal Exercise Evaluation Matrix, which appears later in this document as Table 2, in place of the exercise objective groupings which appear on Pages C.2-3 and C.2-4 of REP-14.

<sup>2</sup> We are not republishing the sample "Evaluation Module" in this notice because no changes have been made.

### Background on Exercise Evaluation

FEMA, through the REP program, evaluates exercises to assess the capability of Offsite Response Organizations (ORO) to respond to an emergency involving a commercial nuclear power plant. These exercises are conducted in accordance with FEMA regulations, which appear in 44 CFR Part 350.<sup>3</sup> Although section 350.9 is the portion of Part 350 that primarily speaks to exercises, it does not specifically address the standards under which exercises are to be conducted and performance is to be evaluated. These standards are addressed in 44 CFR 350.5(a) which states,

Section 50.47 of [the NRC's] Emergency Planning Rule [10 CFR Parts 50 [Appendix E] and 70 as amended and the joint FEMA-Nuclear Regulatory Commission Criteria for Preparation and Evaluation of Radiological Response Plants and Preparedness In Support of Nuclear Power Plants (NUREG-0654/FEMA REP-1, Rev 1 November, 1980)]<sup>4</sup> \* \* \* are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local government to implement them. Both the planning and preparedness standards and related criteria contained in NUREG-0654 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness.<sup>5</sup>

Planning Standard N of NUREG-0654 addresses the conduct of exercises. The Planning Standard states that "Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities \* \* \* and deficiencies identified as a result of exercises \* \* \* are (will be) corrected." Evaluation criterion N.1.a of NUREG-0654 defines an exercise as "an event that tests the integrated capability and a major portion of the basic elements existing within emergency preparedness plans and organizations." The Planning Standard N criteria contain several requirements for exercises. All exercises must simulate an emergency that results in offsite radiological emergency releases that would require response by offsite authorities.<sup>6</sup> Scenarios should be

<sup>3</sup> The preamble to 44 CFR Part 350 is published at 46 FR 44332 [September 28, 1983].

<sup>4</sup> This document is hereafter referred to as NUREG-0654.

<sup>5</sup> See also, 44 CFR 350.13(a) which states in relevant part "The basis upon which [FEMA] makes the determination for withdrawal of approval [of a State or local radiological emergency plan] is the same basis used in reviewing plans and exercises, i.e., the planning standards and related criteria in NUREG 0654/FEMA REP-1, Rev. 1."

<sup>6</sup> The NRC staff comment noted that an acceptable exercise scenario could involve a sufficient fission

varied from year to year and conducted under various weather conditions; some exercises or drills should be off-hours and unannounced.<sup>7</sup> In other respects, the Planning Standard N criteria contemplate that exercises will be conducted as set forth in NRC and FEMA rules and in exercise evaluation guidance.<sup>8</sup>

In September 1991, FEMA published the current exercise evaluation guidance, which is REP-14. REP-14 established a series of 34 objectives (REP-14 Objectives) that interpret and apply the guidance contained in NUREG-0654. A companion document, REP-15, contained a series of forms and checklists keyed to the 34 REP-14 Objectives for use by exercise evaluators in documenting performance. FEMA circulated both documents for public comment.<sup>9</sup>

REP-14 also established the frequency with which each of the objectives would be demonstrated in exercises. The REP-14 Objectives were divided into three groups. Thirteen objectives in the first group would need to be demonstrated in every exercise. Nine objectives in the second group should be demonstrated in every exercise by some but not all responding organizations as the scenario dictates, provided that all responding organizations must demonstrate the objective once every six years. Another eleven objectives must be demonstrated once every six years.<sup>10</sup>

### Public Comment on the Proposed Evaluation Areas

The new approach to exercise evaluation discussed in this notice is the outgrowth of a multi-year strategic review of the REP program. The strategic review process that led to the formulation of this approach was explained in the June 11, 2001 **Federal**

**Register** notice [66 FR 31343-31344]. A key recommendation of the strategic review process was that FEMA streamline the exercise evaluation process by making the criteria less prescriptive and more "results-oriented."

A number of commenters felt that the proposal published on June 11 substantially met this objective. A State emergency management agency, writing for itself and two counties noted, "In general, we feel that the proposals are a substantial improvement over previous evaluation methodologies. The document is much less prescriptive and establishes the basis for an outcome-based evaluation." Another State observed, "This proposal showed that FEMA not only listened to the OROs' concerns, but took our advice to heart and followed through with its commitment to make the exercise evaluation process more performance-based and less subjective." However, several other commenters felt that the document remained too prescriptive. We have examined their suggestions and have made adjustments to certain of the criteria where appropriate. A public interest group suggested that certain of the evaluation criteria appear to significantly lower performance standards. We considered each of their examples, but we disagree with their conclusions.

The NRC staff observed, "As a result of a staff level review of the [**Federal Register** notice] and our participation in the strategic review process, it is our belief that exercises conducted and evaluated pursuant to the revised methodology will continue to provide FEMA with sufficient basis to support reasonable assurance recommendations to the NRC."

Two commenters, representing State agencies, suggested that FEMA periodically review the evaluation criteria to determine whether further improvements are needed. FEMA accepts the suggestion. The initial review of the evaluation criteria will commence in January 2003 when data from the first full year of exercises conducted under the new criteria will be available.

### Discussion of the New Evaluation Criteria

#### Evaluation Area 1—Emergency Operations Management

Evaluation Area 1 has five sub-elements: (a) Mobilization, (b) facilities, (c) direction and control, (d) communications equipment and (e) equipment and supplies to support operations.

Criterion 1.a.1 requires that the OROs use effective procedures to alert, notify and mobilize emergency personnel and activate facilities in a timely manner. FEMA previously noted that one of the more difficult issues to arise from the strategic review is how OROs demonstrate their twenty-four hour staffing capability in an exercise. The evaluation criteria associated with Planning Standard "A" of NUREG-0654 require that "each principal organization shall be capable of continuous (twenty-four-hour) operations for a protracted period."<sup>11</sup> These criteria also require that each State and local response organization be capable of twenty-four-hour emergency response, including 24 hour per day staffing of communications links.<sup>12</sup>

REP-14 Objective 30.1,<sup>13</sup> which implemented these criteria, required all agencies responsible for providing twenty-four-hour staffing to demonstrate a shift change once every six years. The shift change was demonstrated by providing a "one-for-one replacement \* \* \* of key staff" responsible for communications, direction and control of operations, alert and notification of the public, accident assessment, information for the public and the media, radiological monitoring, protective response and medical and public health support.<sup>14</sup>

REP-14 Objective 30.2 requires outgoing staff members to demonstrate the capability to brief their replacements on the current status of the simulated emergency. The purpose of this demonstration is to assure that the transition from the outgoing to the incoming shift is accomplished without discontinuity in operations.

The dissatisfaction within the REP community about Objective 30 seemed to stem from time constraints associated with the exercise. OROs will bring a second shift (often composed of volunteers who must take time away from other responsibilities) in for the exercise, only to discover that there is little time left in the exercise for the second shift to actually demonstrate their capabilities.

In response to these concerns, new evaluation criterion 1.a.1 eliminates the requirement that OROs demonstrate a shift change once every six years. In order to assure that OROs have sufficient staffing to support twenty-four hour operations, we will require that

product accumulation in containment without a release, notwithstanding the language of Planning Standard N. FEMA believes that exercise scenarios that involve offsite radiological emergency releases provide a better test of an ORO's integrated response capability.

<sup>7</sup> See, Planning Standard N, evaluation criteria 1.a and 1.b.

<sup>8</sup> See, Planning Standard N, evaluation criteria 1.a (rules) and 3 (exercise evaluation guidance).

<sup>9</sup> On March 27, 1991, FEMA noticed the availability of REP-14 and REP-15 for public comment in the **Federal Register** [56 FR 12734]. FEMA announced that REP-14 and REP-15 were final and effective in subsequent **Federal Register** notices, 57 FR 4880 (February 10, 1992) corrected by 57 FR 10956 (March 31, 1992).

<sup>10</sup> See, REP-14, pages C-2.3 to C-2.4. REP-14 Objective 34 was not included in any of the three groups because it is not demonstrated by OROs. Objective 34 addresses demonstration of emergency response capability by nuclear power plant licensees in the event that State and local government decline to participate in radiological emergency planning and preparedness.

<sup>11</sup> Planning Standard A, evaluation criterion A.4.

<sup>12</sup> Planning Standard A, evaluation criterion A.1.e.

<sup>13</sup> Objective 30.1 is criterion 1 under Objective 30. REP-14 evaluation criteria will be referred to in this manner throughout the document.

<sup>14</sup> REP-14 page D.30-1.

they certify this capability in the Annual Letter of Certification. Additionally, FEMA REP site specialists will review ORO 24-hour staffing capabilities during Staff Assistance visits. This approach is consistent with Planning Standard "A" of NUREG-0654 and its associated criteria, neither of which requires the demonstration of a shift change. Many comments suggested that FEMA approach verification of 24-hour capability in this manner.

However we also expressed concern in the June 11 **Federal Register** notice over whether key personnel on the off-hours shifts can perform as well as the primary responders. FEMA sought comment on whether the evaluation criteria should require OROs to demonstrate their twenty-four hour response capability by alternating the key staff that participate in the biennial exercises from among the shifts.<sup>15</sup>

The commenters overwhelmingly opposed FEMA's proposal to rotate exercise participation among shifts. Several of these commenters noted that they do rotate REP exercise participation among their shifts but would prefer that FEMA not prescribe that this be done. Other commenters suggested that given the frequent turnover of personnel in the emergency management community, most responders have an opportunity to participate in evaluated exercises at one time or another. Some commenters argued that they should be graded on the performance of their primary team and noted that people who occupy most key functions have adequate opportunities to train in non-graded exercises and exercises to prepare for non-radiological incidents. Commenters also argued that those who occupy key positions in their organizations would remain in place throughout the emergency response, except for relatively brief rest and sanitation breaks. Even then, they could be called back to address a critical issue. Still other commenters expressed concern that emergency management volunteers are being asked to participate in an increasing number of exercises, each directed at a specific hazard. These commenters were concerned that the cumulative exercise burden might cause volunteers to drop out. Others noted the availability of interstate mutual aid personnel to supplement local staff. FEMA generally found these arguments to be valid.

In the June 11 **Federal Register** notice, FEMA proposed that a shift change

briefing occur during every exercise, regardless of whether a shift change is actually demonstrated. After considering the comments we have concluded that we will not require the demonstration of shift change briefings. Evaluation criterion 1.c.1 already requires that periodic briefings occur during the course of an exercise. To require a simulated shift change briefing would not only lengthen the exercise but also require a redundant demonstration of a briefing capability.

We sought comments about whether FEMA should commence exercises on weekends, holidays or off-hours. The comments from the emergency management community were uniformly negative. Some commenters responded that emergency management has advanced to the level that off-hours response to actual incidents is routine. Other commenters felt that the cumulative burden of actual off-hours responses and off-hours exercises on volunteers was too great.

The NRC staff, on the other hand, suggested that off-hours and unannounced exercises were helpful since actual events happen in the off-hours. Evaluation Criterion 1.b of Planning Standard "N", as interpreted by subsequent guidance, requires off-hours exercises. Additionally Planning Standard "N" suggests that some exercises should be unannounced. In light of this language, FEMA believes that the new exercise evaluation criteria should provide for off-hours and unannounced exercises, but will defer consideration of a standard until it has finalized a policy on granting exercise credit for participation in actual emergency response activities and equivalent drills and exercises. We believe that many OROs will be able to demonstrate their ability to quickly mobilize personnel at any time of the day, which is the reason that Planning Standard "N" suggests unannounced and off-hours exercises, through documented performance in actual emergency responses and other equivalent drills and exercises. We will publish the proposed credit policy and off-hours, unannounced exercise criteria in the **Federal Register** for comment before any are implemented.

Criterion 1.b.1 requires that the ORO demonstrate that its facilities are sufficient to support the emergency response. Under the proposed exercise methodology, facilities will only be evaluated if they are new or have substantial changes in structure or mission. It seems redundant to require the re-evaluation of a facility every two years if the facility has not changed. FEMA will require that OROs certify in

the Annual Letter of Certification that their facilities are available and adequate to meet emergency response needs.<sup>16</sup> FEMA reserves the right to audit the representations made in the Annual Letter of Certification.

Criterion 1.d requires that communications capabilities be managed in support of emergency operations with communication links established and maintained with appropriate locations. The proper functioning of communications equipment is essential to success in any exercise, just as it is essential to success in any response to a real event. FEMA expects that both the primary and backup communications systems, which are required by Planning Standard F, Evaluation Criterion F.1 of NUREG-0654, will be fully functional at the commencement of an exercise. FEMA will continue to require that the ORO demonstrate the functionality of the primary and at least one backup system at each exercise. If one of the two communications systems fails, but there was no adverse effect on exercise performance, then there will be no exercise issue. If the primary and a backup communications system fail, the ORO can prevent an exercise issue by utilizing additional backup communications resources. However, if failure of communications systems has an adverse or potentially adverse effect on exercise performance, then FEMA will assess an exercise issue. In all cases, a failure in a communications system must be remedied no later than the next scheduled communications drill. OROs are expected to advise the REP program site specialist when a communications failure noted during an exercise has been corrected.

A commenter noted that new Evaluation Criterion 1.d.1 requires that primary and backup communications systems rely on separate power sources. This language does not appear in NUREG-0654 and has been deleted.

Criterion 1.e.1 requires that equipment, dosimetry,<sup>17</sup> supplies of potassium iodide (KI) and other required supplies are sufficient to support emergency operations. FEMA may or may not verify that these items are available and in good repair as a stand-alone item in every exercise. A commenter suggested that this represented a lowering of standards. We

<sup>16</sup> This notice contains several new requirements for the Annual Letter of Certification. These requirements are effective for Annual Letters of Certification due January 31, 2002.

<sup>17</sup> The terms permanent-record dosimeter, non-self-reading dosimeter, and non-direct-reading dosimeter, which are used in various of this document, are intended to be synonymous.

<sup>15</sup> We defined key positions in this proposal in the same way that they were defined in REP-14 Objective 30.1.

disagree. Exercise scenarios ordinarily require that equipment and supplies be put to use. If equipment and supplies are unavailable or non-functional, then the ORO may not be able to perform the emergency response activity at an acceptable level. Equipment and supplies that are not checked during an exercise will be checked during a Staff Assistance Visit. Additional assurance that equipment and supplies are available in appropriate quantities and are properly maintained will be obtained in the Annual Letter of Certification. The representations contained in the Annual Letter of Certification are subject to audit.

A number of comments addressed technical provisions of Evaluation Criterion 1.e.1. Three comments addressed the shelf life of KI supplies. KI is a non-prescription thyroid-blocking agent that is thought to provide protection to the thyroid from the uptake of radioiodines. The commenters observed that, if properly stored, KI retains its potency for a longer period than the manufacturer's expiration date would indicate. Current Food and Drug Administration (FDA) guidance authorizes the extension of the expiration date of KI supplies if a certified laboratory renders an opinion that potency remains. FEMA does not have an independent basis to determine if KI supplies remain potent past their expiration date. Accordingly, FEMA will defer to the prevailing FDA guidance when evaluating the availability of KI supplies under Criterion 1.e.1.

Several comments also addressed emergency worker protective equipment. This was an area in which some commenters thought FEMA was too prescriptive. We considered each of the comments carefully. Evaluation criterion 1.e.1 previously required that CDV-700 survey instruments be calibrated annually. This is the generally accepted standard for unmodified CDV-700 instruments. We understand that a number of CDV-700 instruments have been modified. Modified CDV-700 instruments should be calibrated in accordance with the recommendation of the manufacturer of the modification.

Evaluation criterion 1.e.1 previously provided that all instruments should be operationally checked once each calendar quarter and after each use. We have revised this criterion to provide that instruments be checked before each use in an exercise. We will observe this check during exercises. We will not verify during exercises that instruments were checked quarterly. To assure compliance with Planning Standard H

of NUREG-0654, we will require that the ORO represent that instruments have been checked in accordance with the requirements of NUREG-0654 and its plans and procedures in the Annual Letter of Certification.

#### *Evaluation Area 2—Protective Action Decisionmaking*

Evaluation Area 2 assesses the ORO's ability to render decisions about what protective actions members of the public and emergency workers need to take in the wake of an incident. It has five sub-elements: Emergency worker exposure control, radiological assessment and protective action recommendations and decisions for the plume phase of the emergency,<sup>18</sup> protective action decision considerations for the protection of special populations, radiological assessment and decisionmaking for the ingestion pathway exposure<sup>19</sup> and radiological assessment and decisionmaking concerning relocation, re-entry and return.

Evaluation criterion 2.a.1 addresses radiation exposure control for emergency workers. In response to comments we have deleted language in the first two paragraphs of the extent of play that was regarded as unduly prescriptive by commenters.

Various commenters suggested that FEMA not require a demonstration of the capacity to make decisions about authorizing emergency workers to receive radiation doses above the preauthorized levels and to manage workers who have received higher-level doses. FEMA believes that this capability should continue to be demonstrated.<sup>20</sup>

Evaluation criterion 2.b.2 requires OROs to demonstrate a decision making process for recommending the use of KI for the general public. The NRC staff suggested that this criterion should read, "ORO's should demonstrate the capability to make decisions on the distribution and administration of KI as a protective measure for the general public to supplement sheltering and evacuation if the offsite planning authorities generally have determined that KI will be used as a protective measure for the general public under offsite plans." We agree in principle and

have revised the criterion; however, it is important to emphasize that we will only evaluate an ORO's plan to distribute and administer KI to the general public if the ORO has voluntarily decided to utilize KI as a protective measure for the general public.

Sub-element 2.d establishes procedures for ingestion pathway exercises. A number of comments suggested that FEMA not require ingestion pathway exercises unless federal agency participation is sufficient to support State and local efforts. As Chair of the Federal Radiological Preparedness Coordinating Committee, FEMA is taking the lead in encouraging increased federal participation in ingestion pathway exercises. However, the OROs are still obligated to demonstrate that they can make ingestion pathway decisions independent of federal participation under Planning Standards J and N of NUREG-0654. 44 CFR 350.9(c)(4) requires ingestion pathway exercises to be conducted whether or not the federal agencies elect to participate.<sup>21</sup>

Evaluation criterion 2.e.1 requires demonstration of the capability to make decisions on the relocation, re-entry and return of the general public following a severe accident at a nuclear power plant. One commenter inquired whether the criterion requires that the ORO provide dosimetry to members of the public entering a restricted zone who are escorted by personnel wearing dosimetry. FEMA believes that everyone in the restricted zone needs to be able to track his or her dose. Accordingly, we believe that this criterion, which is based in part on evaluation criterion K.3.a of Planning Standard "K," requires that each individual in the restricted zone have a non-self-reading (permanent-record) dosimeter. It is sufficient for the escorts to possess direct reading dosimetry.

A commenter suggested that FEMA retain the standard and optional approaches to re-entry and relocation decisionmaking in REP-14. We understand that the optional approach is more conservative than the standard approach, which we have incorporated in the new evaluation areas. If the ORO's plan and procedures provide that the optional approach will be employed in re-entry and relocation decisionmaking, then FEMA will evaluate performance under the optional approach.

<sup>18</sup> The plume phase of the emergency focuses on preventing exposure of a population to radiation through direct contact with the plume.

<sup>19</sup> The ingestion pathway phase focuses on preventing exposure of a population to radiation through ingestion of food and water that may have been contaminated by radiation.

<sup>20</sup> This observation also applies to comments arguing the same point in connection with sub-elements 3.c.

<sup>21</sup> These observation also apply to comments submitted with respect to Evaluation Criteria 3.e.1 and 3.e.2, 4.b.1 and 4.b.2.

### *Evaluation Area 3—Protective Action Implementation*

Evaluation Area 3 assesses the ORO's ability to implement protective actions, including evacuation. It contains six sub-elements: implementation of emergency worker exposure control, implementation of KI decisions, implementation of protective actions for special populations, implementation of traffic and access control, implementation of ingestion pathway decisions, and implementation of relocation, re-entry and return decisions.

Criterion 3.a.1 provides that OROs should demonstrate the capability to provide appropriate dosimetry, dosimeter chargers, and instructions on the use of dosimetry to emergency workers. One commenter suggested that each emergency worker in the field does not require a personal dosimeter charger. We agree; however, every emergency worker should have reasonable access to a dosimeter charger. OROs should demonstrate the ability to provide dosimetry that is appropriate in relation to the responsibilities of the emergency workers.

The new criterion makes it clear that emergency workers can refer to published procedures and confer with co-workers in responding to evaluator inquiries about dosimetry, just as they would, if necessary, in a real incident. One commenter thought that this amounted to a "monumental lowering of standards" and suggested that some emergency workers may be "clueless" about how to read dosimetry. We disagree. Emergency workers are trained in the proper use of dosimetry. It is anticipated that in a real situation they would refer to printed materials and confirm readings with other members of their team.

Criterion 3.c.1 evaluates implementation of protective actions for special populations other than schools. OROs must demonstrate a capability to alert and notify special populations, transportation providers (including special resources for people with disabilities), and establish reception facilities. The availability of resources to transport special populations out of the plume exposure pathway is key. For this reason, we proposed that OROs actually contact at least  $\frac{1}{3}$  of their transportation providers during each exercise to determine whether buses and drivers would be available if the exercise were an actual emergency. We received a significant number of comments that suggested we delete this requirement. Some commenters thought the

demonstration proves only that their list of telephone numbers is correct. Other commenters felt that some actual contacts should be demonstrated but that the number of contacts should be negotiated in the extent of play agreement. We agree with these commenters and have modified Criterion 3.c.1 accordingly.

Criterion 3.c.2 evaluates the capability to implement protective action decisions for schools and day care centers. The criterion requires that OROs alert and notify every public school system or district, in every exercise, using whatever method would be used to make the notification in the event of a real incident. A number of commenters who use technology such as auto-dialers and tone alert radios to make actual notifications objected to demonstrating the technology during exercises. The concern expressed was that some would not understand that the activation was part of an exercise and would panic. Since the systems are regularly tested, the argument that an activation in connection with an exercise would cause panic seems improbable.

A number of comments addressed the extent to which private schools and day care centers must participate in REP exercises. We note that there are variations in the amount of control that OROs exercise over private schools and day care centers. A number of commenters suggested that FEMA should not require demonstration of actual or simulated contacts with day care centers. If the ORO's plan provides that private schools and/or day care providers are to be treated as special populations for the purpose of notification, then FEMA believes it is reasonable to ask that the ORO demonstrate the ability to execute this portion of the plan. However, if the plan regards some or all private schools and/or day care centers (such as those located in private homes) as part of the general population, rather than a special population, these facilities fall outside of Criterion 3.c.2. Therefore, the ability to make individual contacts need not be demonstrated. Since there are considerable differences in the way that ORO plans and procedures relate to private schools and day care centers, we believe it is more appropriate to address whether and how these facilities will participate in exercises through the Extent of Play agreement rather than the evaluation criteria.

In the June 11 **Federal Register** notice FEMA reserved the right to interview bus drivers and/or bus escorts (if a plan provides that the buses will be escorted) to determine their familiarity with

evacuation routes. In response to comments, we will make every effort to interview bus drivers and/or escorts out of sequence from the exercise, during their regular duty day, in order to reduce costs to OROs.

Criterion 3.d.1 evaluates the capability to establish and maintain appropriate traffic control and access points. A commenter suggested that FEMA should not interview public safety personnel about traffic and access control plans but confine these interviews to determining whether the public safety workers can adequately utilize personal protective equipment. We believe that both topics are equally important. Interviews may include such topics as re-entry criteria, location of congregate care centers and evacuation routes.

### *Evaluation Area 4—Field Measurement and Analysis*

Evaluation Area 4 assesses the capability of OROs to conduct and analyze field radiation measurements. It has three sub-elements: plume phase field measurements and analysis, post plume phase field measurements and sampling, and laboratory operations. A commenter asked how high range instruments referred to in Criterion 4.a.1 should be operationally tested. The criterion requires that the ORO demonstrate their established policy. FEMA will observe that the operational check is performed in accordance with the ORO's policy. The location where these operational checks will occur can be negotiated in the extent of play agreement.

Another commenter suggested that the ORO should not be required to send field teams to measure the plume centerline or peak plume measurement under Criterion 4.a.2. The commenter observed that protective action decisions could be formulated based upon plant conditions prior to release and measurements at the plume edges. Criterion 4.a.2 allows the ORO to rely on plume centerline and peak plume measurements collected by the nuclear power plant licensee. However, if this data is not available from the licensee, then the decision as to whether this data is necessary to sufficiently characterize the plume rests with the ORO. A commenter thought Criterion 4.a.2 was too prescriptive in describing how the transfer of samples to a radiological laboratory should occur. The criterion requires that standard chain of custody procedures be observed in transferring samples. We do not believe that it is unduly prescriptive.

### *Evaluation Area 5—Emergency Notification and Public Information*

Evaluation Area 5 looks at the ORO's ability to notify the public of an incident and to effectively communicate protective action decisions. It contains two sub-elements: activation of the prompt alert and notification system and emergency information and instructions for the public and the media.

Proposed Criteria 5.a.1, 5.a.2 and 5.a.3 address activation of the prompt alert and notification system. We are publishing criteria 5.a.1 and 5.a.3 in final form, but are deferring final publication of proposed Criterion 5.a.2. Criterion 5.a.1 requires that the alert and notification system be activated in a timely manner following notification to the ORO by the nuclear power plant of an incident that requires activation of the alert and notification system but does not immediately require urgent action by the public. Whether decisionmakers initiate the alert and notification system in a "timely manner" will be judged in relation to the scenario. We will also evaluate the quality of the public notification. A commenter felt that the term "timely manner" is too subjective. We disagree. The decision on whether and when to initiate the alert and notification sequence in situations where no urgent action is required by the public is a matter of judgment. The ORO is expected to exercise this judgment in accordance with its plans and procedures.

Proposed criterion 5.a.2 required that activities associated with the alert and notification system in a "fast breaker" situation must be completed within fifteen minutes of the time that ORO officials have received verified notification from the nuclear power plant of a situation that immediately requires urgent public action. The proposed criterion was based on NRC regulations that appear in 10 CFR Part 50, Appendix E.IV.D. Many commenters addressed the "fast breaker" provision in the June 11 **Federal Register** notice. Pursuant to Section III.E of the Memorandum of Understanding between FEMA and the NRC, the NRC has requested that FEMA defer publishing Criterion 5.a.2 in final at this time. Since Criterion 5.a.2 derives from NRC regulations, it is especially appropriate that FEMA honor this request.

Proposed criteria 5.a.1 and 5.a.2 indicated that the content of the initial informational message should be consistent with current FEMA guidance. FEMA is publishing a companion notice

in today's edition of the **Federal Register** addressing the minimum required content for initial informational messages.

Criterion 5.a.3 addresses backup alerting and notification of the general public in the event of a failure in the primary alert and notification system. It also addresses alerting of people who are located in "exception areas" and are not notified by the Emergency Alert System, tone alert radios or other technology. Criterion 5.a.3 requires that the completion of the alert and notification sequence for exception areas and backup alerting and notification be completed within 45 minutes of the decision by offsite emergency officials to notify the public of an emergency situation. REP-14 required completion of the notification within "approximately" 45 minutes for backup alerting and within 45 minutes for exception areas. The new criterion, which sets a 45-minute standard for both, more closely conforms to the requirements set forth in Appendix 3 to NUREG-0654 and in FEMA REP-10. One commenter suggested that the REP-14 criterion be retained. Another suggested that FEMA establish a "goal of 45 minutes" for completion of the sequence. We will not require that this capability be demonstrated during periods in which weather or road conditions create a safety hazard for mobile teams attempting to meet the 45-minute deadline.

Criterion 5.b.1 tests whether OROs provide accurate emergency information and instructions to the public and the news media in a timely fashion. While FEMA has determined that technical information such as Emergency Classification Levels need not be included in the initial alert and notification system message, this information should be made available to the news media with a plain language explanation for use in subsequent emergency information and instructions.

The preamble to the June 11 **Federal Register** notice stated that the ORO should be prepared to explain the Emergency Classification Level and related technical information in plain language during an exercise. We agree with a commenter who observed that it is the obligation of the nuclear power plant licensee to explain the plant conditions that caused the Emergency Classification Level to be triggered. However, the ORO is required to explain the significance of the Emergency Classification Level and why protective action decisions have been made based upon the Emergency Classification Level. We also accepted

comments that the so-called "rumor control" telephone line hereafter be referred to as the "public inquiry hotline" and that the term "press release" be replaced with "media release."

### *Evaluation Area 6: Support Operations/Facilities*

Evaluation Area 6 assesses the capability of OROs to account for, monitor and decontaminate evacuees, emergency workers, and emergency worker equipment, to provide temporary care of evacuees and to assure that capabilities exist for transporting and treating injured individuals who have been exposed to radiation. These competencies are tested in the four sub-elements associated with Evaluation Area 6. We agree with a commenter who indicated that Criterion 6.a.1 does not require that an ORO demonstrate the ability to monitor the entire population of an Emergency Planning Zone within 12 hours of the incident. The new evaluation areas do not affect longstanding guidance that requires OROs to plan for and to demonstrate the ability to monitor 20% of the Emergency Planning Zone population within the twelve-hour timeframe.

Several comments addressed the monitoring of vehicles that may need to be decontaminated. One commenter asked whether FEMA requires that vehicles used by members of the general public be monitored. NUREG-0654 does not require that vehicles operated by members of the general public be monitored or decontaminated. FEMA has nevertheless required that procedures be in place to monitor and decontaminate vehicles if an occupant is found to be contaminated. During an exercise these procedures at a minimum must be described to the evaluator.

Other commenters thought that Criterion 6.b.1, which pertains to emergency worker vehicles, is too prescriptive about how vehicles are to be monitored. The criterion offers examples of places where radiation can accumulate. It is not intended to require that all of these areas be inspected. Another commenter suggested that we not mention air filters in Criterion 6.b.1 since they are inaccessible in modern cars. We have deleted this reference.

In response to a comment concerning Criterion 6.d.1, we note that a person who has suffered a critical injury may be transported to a hospital that does not have the capability to monitor for radiation exposure. Under such circumstances, it is acceptable for the ORO to provide the monitoring capability at the hospital.

TABLE 1—COMPARISON OF PROPOSED EVALUATION AREAS WITH NUREG-0654/FEMA REP-1, REV. 1 PLANNING CRITERIA AND REP 14/15 OBJECTIVES AND CRITERIA

Evaluation area/Sub-element/Criterion	NUREG 0654 criteria	REP-14/15 objective & criterion
1—EMERGENCY OPERATIONS MANAGEMENT	.....	1, 2, 3, 4, 5, 8, 14, 30
1.a—Mobilization	.....	.....
1.a.1: OROs use effective procedures to alert, notify, and mobilize emergency personnel and activate facilities in a timely manner.	A.4; D.3, 4; E.1,2; H.4 .....	1.1, 1.2; 30
1.b—Facilities	.....	.....
1.b.1: Facilities are sufficient to support the emergency response .....	H3 .....	2.1
1.c—Direction and Control	.....	.....
1.c.1: Key personnel with leadership roles for the ORO provide direction and control to that part of the overall response effort for which they are responsible.	A.1.d; A.2 a,b .....	3.1
1.d—Communications Equipment	.....	.....
1.d.1: At least two communication systems are available, at least one operates properly, and communication links are established and maintained with appropriate locations. Communications capabilities are managed in support of emergency operations.	F.1, 2 .....	4.1
1.e—Equipment and Supplies to Support Operations	.....	.....
1.e.1: Equipment, maps, displays, dosimetry, potassium iodide (KI), and other supplies are sufficient to support emergency operations.	H. 7, 10; J.10.a,b,e, J.11; K.3.a. ....	2.1; 5.1; 8.2; 14.2
2—PROTECTIVE ACTION DECISION MAKING .....	.....	5, 7, 9, 14, 15, 16, 26, 28
2.A—Emergency Worker Exposure Control	.....	.....
2.a.1: OROs use a decision-making process, considering relevant factors and appropriate coordination, to ensure that an exposure control system, including the use of KI, is in place for emergency workers including provisions to authorize radiation exposure in excess of administrative limits or protective action guides.	J.10.e,f; K.4 .....	5.1, 5.3; 14.1
2.b—Radiological Assessment and Protective Recommendations and Decisions for the Plume Phase of the Emergency	.....	.....
2.b.1: Appropriate protective action recommendations are based on available information on plant conditions, field monitoring data, and licensee and ORO dose projections, as well as knowledge of onsite and offsite environmental conditions.	I.8, 10; Supp. 3 .....	7.1
2.b.2: A decision-making process involving consideration of appropriate factors and necessary coordination is used to make protective action decisions (PADs) for the general public (including the recommendation for the use of KI, if ORO policy).	J.9; J.10.f,m .....	9.1; 14.1
2.c—Protective Action Decisions Consideration for the Protection of Special Populations	.....	.....
2.c.1: Protective action decisions are made, as appropriate, for special population groups.	J.9; J.10.d,e .....	9.1; 15.1; 16.1
2.d—Radiological Assessment and Decision-Making for the Ingestion Exposure Pathway	.....	.....
2.d.1: Radiological consequences for the ingestion pathway are assessed and appropriate protective action decisions are made based on the ORO planning criteria.	J.11 .....	26.1, 26.2
2.e—Radiological Assessment and Decision-Making Concerning Relocation, Re-entry, and Return	.....	.....
2.e.1: Timely relocation, re-entry, and return decisions are made and coordinated as appropriate, based on assessment of radiological conditions and criteria in the ORO's plan and/or procedures.	I.10; M.1 .....	28.1, 28.2, 28.3, 28.4, 28.5
3. PROTECTIVE ACTION IMPLEMENTATION .....	.....	5, 11, 14, 15, 16, 17, 27, 29
3.a—Implementation of Emergency Worker Exposure Control	.....	.....
3.a.1: The OROs issues appropriate dosimetry and procedures, and manages radiological exposure to emergency workers in accordance with the plan and procedures. Emergency workers periodically and at the end of each mission read their dosimeters and record the readings on the appropriate exposure record or chart.	K.3.a, 3.b .....	5.1, 5.2
3.b—Implementation of KI Decision	.....	.....
3.b.1: KI and appropriate instructions are made available should a decision to recommend use of KI be made. Appropriate record keeping of the administration of KI for emergency workers and institutionalized individuals (not the general public) is maintained.	J.10.e .....	14.1, 14.3
3.c—Implementation of Protective Actions for Special Populations	.....	.....
3.c.1: Protective action decisions are implemented for special populations other than schools within areas subject to protective actions.	J.10.c,d,g .....	15.1, 15.2
3.c.2: OROs/School officials decide upon and implement protective actions for schools.	J.10.c,d,g .....	16.1, 16.2, 16.3
3.d—Implementation of Traffic and Access Control	.....	.....
3.d.1: Appropriate traffic and access control is established. Accurate instructions are provided to traffic and access control personnel.	J.10.g,j .....	17.1, 17.2, 17.3
3.d.2: Impediments to evacuation are identified and resolved .....	J.10.k .....	17.4
3.e—Implementation of Ingestion Pathway Decisions	.....	.....
3.e.1: The ORO demonstrates the availability and appropriate use of adequate information regarding water, food supplies, milk and agricultural production within the ingestion exposure pathway emergency planning zone for implementation of protective actions.	J.9, 11 .....	27.1

TABLE 1—COMPARISON OF PROPOSED EVALUATION AREAS WITH NUREG-0654/FEMA REP-1, REV. 1 PLANNING CRITERIA AND REP 14/15 OBJECTIVES AND CRITERIA—Continued

Evaluation area/Sub-element/Criterion	NUREG 0654 criteria	REP-14/15 objective & criterion
3.e.2: Appropriate measures, strategies and pre-printed instructional material are developed for implementing protective action decisions for contaminated water, food products, milk, and agricultural production.	J.9, 11 .....	11.4; 27.2; 27.3
3.f—Implementation of Relocation, Re-entry, and Return Decisions		
3.f.1: Decisions regarding controlled re-entry of emergency workers and relocation and return of the public are coordinated with appropriate organizations and implemented.	M.1, 3 .....	29.1, 29.2, 29.3, 29.4
4—FIELD MEASUREMENT AND ANALYSIS .....	.....	6, 8, 24, 25
4.a—Plume Phase Field Measurement and Analyses		
4.a.1: The field teams are equipped to perform field measurements of direct radiation exposure (cloud and ground shine) and to sample airborne radioiodine and particulates.	H.10; I.7, 8, 9 .....	6.1; 8.1, 8.2
4.a.2: Field teams are managed to obtain sufficient information to help characterize the release and to control radiation exposure.	I.8,11; J.10.a; H.12 .....	6.3, 6.4
4.a.3: Ambient radiation measurements are made and recorded at appropriate locations, and radioiodine and particulate samples are collected. Teams will move to an appropriate low background location to determine whether any significant (as specified in the plan and/or procedures) amount of radioactivity has been collected on the sampling media.	I.9 .....	6.4,6.5; 8.3, 8.4, 8.5, 8.6
4.b—Post Plume Phase Field Measurements and Sampling		
4.b.1: The field teams demonstrate the capability to make appropriate measurements and to collect appropriate samples (e.g., food crops, milk, water, vegetation, and soil) to support adequate assessments and protective action decision-making.	I.8; J.11 .....	24.1
4.c—Laboratory Operations		
4.c.1: The laboratory is capable of performing required radiological analyses to support protective action decisions.	C.3; J.11 .....	25.1, 25.2
5—EMERGENCY NOTIFICATION AND PUBLIC INFORMATION .....	.....	10, 11, 12, 13
5.a—Activation of the Prompt Alert and Notification System		
5.a.1: Activities associated with primary alerting and notification of the public are completed in a timely manner following the initial decision by authorized offsite emergency officials to notify the public of an emergency situation. The initial instructional message to the public must include as a minimum the elements required by current FEMA REP guidance.	10 CFR Part 50, Appendix E.IV.D; E.5, 6, 7.	10.1
5.a.2: [RESERVED]		
5.a.3: Activities associated with FEMA approved exception areas (where applicable) are completed within 45 minutes following the initial decision by authorized offsite emergency officials to notify the public of an emergency situation. Backup alert and notification of the public is completed within 45 minutes following the detection by the ORO of a failure of the primary alert and notification system.	Appendix 3: B.2.c; E.6 .....	10.2, 10.3
5.b—Emergency Information and Instructions for the Public and the Media		
5.b.1: OROs provide accurate emergency information and instructions to the public and the news media in a timely manner.	E.5,7; G.3.a; G.4.c .....	11.1, 11.2, 11.3; 12.1, 12.2; 13.1, 13.2
6—SUPPORT OPERATIONS/FACILITIES .....	.....	18, 19, 20, 21, 22
6.a—Monitoring and Decontamination of Evacuees and Emergency Workers and Registration of Evacuees		
6.a.1: The reception center/emergency workers facility has appropriate space, adequate resources, and trained personnel to provide monitoring, decontamination, and registration of evacuees and/or emergency workers.	J.10.h; J.12; K.5.a .....	18.1, 18.2, 18.3, 18.4, 18.5, 22.1, 22.2
6.b—Monitoring and Decontamination of Emergency Worker Equipment		
6.b.1: The facility/ORO has adequate procedures and resources for the accomplishment of monitoring and decontamination of emergency worker equipment, including vehicles.	K.5b .....	22.1; 22.3
6.c—Temporary Care of Evacuees		
6.c.1: Managers of congregate care facilities demonstrate that the centers have resources to provide services and accommodations consistent with American Red Cross planning guidelines. (Found in MASS CARE—Preparedness Operations, ARC 3031) Managers demonstrate the procedures to assure that evacuees have been monitored for contamination and have been decontaminated as appropriate prior to entering congregate care facilities.	J.10.h; J.12 .....	19.1, 19.2
6.d—Transportation and Treatment of Contaminated Injured Individuals		
6.d.1: The facility/ORO has the appropriate space, adequate resources, and trained personnel to provide transport, monitoring decontamination, and medical services to contaminated injured individuals.	F.2; H.10I K.5,a,b; L.1; L.4	20.1, 20.2 20.3, 20.4; 20.5; 21.1, 21.2, 21.3, 21.4

**Evaluation Area 1****Emergency Operations Management***Sub-Element 1.a—Mobilization***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to alert, notify, and mobilize emergency personnel and to activate and staff emergency facilities.

Criterion 1.a.1: OROs use effective procedures to alert, notify, and mobilize emergency personnel and activate facilities in a timely manner. (NUREG-0654, A.4; D.3, 4; E.1, 2; H.4)

**Extent of Play**

Responsible OROs should demonstrate the capability to receive notification of an emergency situation from the licensee, verify the notification, and contact, alert, and mobilize key emergency personnel in a timely manner. Responsible OROs should demonstrate the activation of facilities for immediate use by mobilized personnel when they arrive to begin emergency operations. Activation of facilities should be completed in accordance with the plan and/or procedures. Pre-positioning of emergency personnel is appropriate, in accordance with the extent of play agreement, at those facilities located beyond a normal commuting distance from the individual's duty location or residence. Further, pre-positioning of staff for out-of-sequence demonstrations is appropriate in accordance with the extent of play agreement.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Sub-Element 1.b—Facilities***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have facilities to support the emergency response.

Criterion 1.b.1: Facilities are sufficient to support the emergency response. (NUREG-0654, H.3)

**Extent of Play**

Facilities will only be specifically evaluated for this criterion if they are new or have substantial changes in structure or mission. Responsible OROs should demonstrate the availability of facilities that support the

accomplishment of emergency operations. Some of the areas to be considered are: adequate space, furnishings, lighting, restrooms, ventilation, backup power and/or alternate facility (if required to support operations).

Facilities must be set up based on the ORO's plans and procedures and demonstrated as they would be used in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Sub-Element 1.c—Direction and Control***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to control their overall response to an emergency.

Criterion 1.c.1: Key personnel with leadership roles for the ORO provide direction and control to that part of the overall response effort for which they are responsible. (NUREG-0654, A.1.d; A.2.a, b)

**Extent of Play**

Leadership personnel should demonstrate the ability to carry out essential functions of the response effort, for example: keeping the staff informed through periodic briefings and/or other means, coordinating with other appropriate OROs, and ensuring completion of requirements and requests.

All activities associated with direction and control must be performed based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless otherwise noted above or indicated in the extent of play agreement.

*Sub-Element 1.d—Communications Equipment***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should establish reliable primary and backup communication systems to ensure communications with key emergency personnel at locations such as the following: appropriate contiguous governments within the emergency planning zone (EPZ), Federal emergency response organizations, the licensee and its facilities, emergency operations centers (EOC), and field teams.

Criterion 1.d.1: At least two communication systems are available, at least one operates properly, and communication links are established and maintained with appropriate locations. Communications

capabilities are managed in support of emergency operations. (NUREG-0654, F.1, 2)

**Extent of Play**

ORO's will demonstrate that a primary and at least one backup system are fully functional at the beginning of an exercise. If a communications system or systems are not functional, but exercise performance is not affected, no exercise issue will be assessed. Communications equipment and procedures for facilities and field units should be used as needed for the transmission and receipt of exercise messages. All facilities and field teams should have the capability to access at least one communication system that is independent of the commercial telephone system. Responsible OROs should demonstrate the capability to manage the communication systems and ensure that all message traffic is handled without delays that might disrupt the conduct of emergency operations. OROs should ensure that a coordinated communication link for fixed and mobile medical support facilities exists. The specific communications capabilities of OROs should be commensurate with that specified in the response plan and/or procedures. Exercise scenarios could require the failure of a communications system and the use of an alternate system, as negotiated in the extent of play agreement.

All activities associated with the management of communications capabilities must be demonstrated based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless otherwise noted above or in the extent of play agreement.

*Sub-Element 1.e—Equipment and Supplies To Support Operations***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have emergency equipment and supplies adequate to support the emergency response.

Criterion 1.e.1: Equipment, maps, displays, dosimetry, potassium iodide (KI), and other supplies are sufficient to support emergency operations. (NUREG-0654, H.7,10; J.10.a, b, e, J.11; K.3.a)

**Extent of Play**

Equipment within the facility (facilities) should be sufficient and consistent with the role assigned to that facility in the ORO's plans and/or procedures in support of emergency

operations. Use of maps and displays is encouraged.

All instruments, including air sampling flow meters (field teams only), should be inspected, inventoried, and operationally checked before each use. They should be calibrated in accordance with the manufacturer's recommendations (or at least annually for the unmodified CDV-700 series or if there are no manufacturer's recommendations for a specific instrument; modified CDV-700 instruments should be calibrated in accordance with the recommendation of the modification manufacturer.). A label indicating such calibration should be on each instrument or verifiable by other means. Note: Field team equipment is evaluated under 4.a.1; radiological laboratory equipment under 4.c.1; reception center and emergency worker facilities' equipment is evaluated under 6.a.1; and ambulance and medical facilities' equipment is evaluated under 6.d.1.

Sufficient quantities of appropriate direct-reading and permanent record dosimetry and dosimeter chargers should be available for issuance to all categories of emergency workers that could be deployed from that facility. Appropriate direct-reading dosimetry should allow individual(s) to read the administrative reporting limits and maximum exposure limits contained in the ORO's plans and procedures.

Dosimetry should be inspected for electrical leakage at least annually and replaced, if necessary. CDV-138s, due to their documented history of electrical leakage problems, should be inspected for electrical leakage at least quarterly and replaced if necessary. This leakage testing will be verified during the exercise, through documentation submitted in the Annual Letter of Certification, and/or through a staff assistance visit.

Responsible OROs should demonstrate the capability to maintain inventories of KI sufficient for use by emergency workers, as indicated on rosters; institutionalized individuals, as indicated in capacity lists for facilities; and, where stipulated by the plan and/or procedures, members of the general public (including transients) within the plume pathway EPZ.

Quantities of dosimetry and KI available and storage location(s) will be confirmed by physical inspection at storage location(s) or through documentation of current inventory submitted during the exercise, provided in the Annual Letter of Certification submission, and/or verified during a Staff Assistance Visit. Available supplies of KI should be within the

expiration date indicated on KI bottles or blister packs. As an alternative, the ORO may produce a letter from FEMA indicating that the KI supply remains potent, in accordance with Food and Drug Administration (FDA) guidance. FEMA issues these letters based upon the findings of the certified laboratory that performed the analysis at the ORO's request and expense.

At locations where traffic and access control personnel are deployed, appropriate equipment (e.g., vehicles, barriers, traffic cones and signs, etc.) should be available or their availability described.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

## Evaluation Area 2

### Protective Action Decision-Making

#### *Sub-Element 2.a—Emergency Worker Exposure Control*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to assess and control the radiation exposure received by emergency workers and have a decision chain in place, as specified in the ORO's plans and procedures, to authorize emergency worker exposure limits to be exceeded for specific missions.

Radiation exposure limits for emergency workers are the recommended accumulated dose limits or exposure rates that emergency workers may be permitted to incur during an emergency. These limits include any pre-established administrative reporting limits (that take into consideration Total Effective Dose Equivalent or organ-specific limits) identified in the ORO's plans and procedures.

Criterion 2.a.1: OROs use a decision-making process, considering relevant factors and appropriate coordination, to ensure that an exposure control system, including the use of KI, is in place for emergency workers including provisions to authorize radiation exposure in excess of administrative limits or protective action guides. (NUREG-0654, K.4, J.10. e, f)

##### Extent of Play

ORO's authorized to send emergency workers into the plume exposure pathway EPZ should demonstrate a

capability to meet the criterion based on their emergency plans and procedures.

Responsible OROs should demonstrate the capability to make decisions concerning the authorization of exposure levels in excess of pre-authorized levels and to the number of emergency workers receiving radiation dose above pre-authorized levels.

As appropriate, OROs should demonstrate the capability to make decisions on the distribution and administration of KI as a protective measure, based on the ORO's plan and/or procedures or projected thyroid dose compared with the established Protective Action Guides (PAGs) for KI administration.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 2.b.—Radiological Assessment and Protective Action Recommendations and Decisions for the Plume Phase of the Emergency*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to independently project integrated dose from exposure rates or other information and compare the estimated dose savings with the protective action guides. OROs have the capability to choose, among a range of protective actions, those most appropriate in a given emergency situation. OROs base these choices on PAGs from the ORO's plans and procedures or EPA 400-R-92-001 and other criteria, such as, plant conditions, licensee protective action recommendations, coordination of protective action decisions with other political jurisdictions (e.g., other affected OROs), availability of appropriate in-place shelter, weather conditions, evacuation time estimates, and situations that create higher than normal risk from evacuation.

Criterion 2.b.1: Appropriate protective action recommendations are based on available information on plant conditions, field monitoring data, and licensee and ORO dose projections, as well as knowledge of onsite and offsite environmental conditions. (NUREG-0654, I.8, 10 and Supplement 3)

##### Extent of Play

During the initial stage of the emergency response, following notification of plant conditions that may

warrant offsite protective actions, the ORO should demonstrate the capability to use appropriate means, described in the plan and/or procedures, to develop protective action recommendations (PAR) for decision-makers based on available information and recommendations from the licensee and field monitoring data, if available.

When release and meteorological data are provided by the licensee, the ORO also considers these data. The ORO should demonstrate a reliable capability to independently validate dose projections. The types of calculations to be demonstrated depend on the data available and the need for assessments to support the PARs appropriate to the scenario. In all cases, calculation of projected dose should be demonstrated. Projected doses should be related to quantities and units of the PAG to which they will be compared. PARs should be promptly transmitted to decision-makers in a prearranged format.

Differences greater than a factor of 10 between projected doses by the licensee and the ORO should be discussed with the licensee with respect to the input data and assumptions used, the use of different models, or other possible reasons. Resolution of these differences should be incorporated into the PAR if timely and appropriate. The ORO should demonstrate the capability to use any additional data to refine projected doses and exposure rates and revise the associated PARs.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

**Criterion 2.b.2:** A decision-making process involving consideration of appropriate factors and necessary coordination is used to make protective action decisions (PAD) for the general public (including the recommendation for the use of KI, if ORO policy). (NUREG-0654, J.9, 10.f,m)

#### Extent of Play

Offsite Response Organizations (ORO) should have the capability to make both initial and subsequent PADs. They should demonstrate the capability to make initial PADs in a timely manner appropriate to the situation, based on notification from the licensee, assessment of plant status and releases, and PARs from the utility and ORO staff.

The dose assessment personnel may provide additional PARs based on the subsequent dose projections, field

monitoring data, or information on plant conditions. The decision-makers should demonstrate the capability to change protective actions as appropriate based on these projections.

If the ORO has determined that KI will be used as a protective measure for the general public under offsite plans, then the ORO should demonstrate the capability to make decisions on the distribution and administration of KI as a protective measure for the general public to supplement sheltering and evacuation. This decision should be based on the ORO's plan and/or procedures or projected thyroid dose compared with the established PAG for KI administration. The KI decision-making process should involve close coordination with appropriate assessment and decision-making staff.

If more than one ORO is involved in decision-making, OROs should communicate and coordinate PADs with affected OROs. OROs should demonstrate the capability to communicate the contents of decisions to the affected jurisdictions.

All decision-making activities by ORO personnel must be performed based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 2.c—Protective Action Decisions Consideration for the Protection of Special Populations*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to determine protective action recommendations, including evacuation, sheltering and use of potassium iodide (KI), if applicable, for special population groups (e.g., hospitals, nursing homes, correctional facilities, schools, licensed day care centers, mobility impaired individuals, and transportation dependent individuals). Focus is on those special population groups that are (or potentially will be) affected by a radiological release from a nuclear power plant.

**Criterion 2.c.1:** Protective action decisions are made, as appropriate, for special population groups. (NUREG-0654, J.9, J.10.d,e)

##### Extent of Play

Usually, it is appropriate to implement evacuation in areas where doses are projected to exceed the lower end of the range of PAGs, except for situations where there is a high-risk

environment or where high-risk groups (e.g., the immobile or infirm) are involved. In these cases, examples of factors that should be considered are: weather conditions, shelter availability, Evacuation Time Estimates, availability of transportation assets, risk of evacuation vs. risk from the avoided dose, and precautionary school evacuations. In situations where an institutionalized population cannot be evacuated, the administration of KI should be considered by the OROs.

All decision-making activities associated with protective actions, including consideration of available resources, for special population groups must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 2.d.—Radiological Assessment and Decision-Making for the Ingestion Exposure Pathway*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the means to assess the radiological consequences for the ingestion exposure pathway, relate them to the appropriate PAGs, and make timely, appropriate protective action decisions to mitigate exposure from the ingestion pathway.

During an accident at a nuclear power plant, a release of radioactive material may contaminate water supplies and agricultural products in the surrounding areas. Any such contamination would likely occur during the plume phase of the accident and, depending on the nature of the release, could impact the ingestion pathway for weeks or years.

**Criterion 2.d.1:** Radiological consequences for the ingestion pathway are assessed and appropriate protective action decisions are made based on the ORO's planning criteria. (NUREG-0654, J.11)

##### Extent of Play

It is expected that the Offsite Response Organizations (ORO) will take precautionary actions to protect food and water supplies, or to minimize exposure to potentially contaminated water and food, in accordance with their respective plans and procedures. Often such precautionary actions are initiated by the OROs based on criteria related to the facility's Emergency Classification Levels (ECL). Such actions may include recommendations to place milk animals on stored feed and to use protected water supplies.

The ORO should use its procedures (for example, development of a sampling plan) to assess the radiological consequences of a release on the food and water supplies. The ORO's assessment should include the evaluation of the radiological analyses of representative samples of water, food, and other ingestible substances of local interest from potentially impacted areas, the characterization of the releases from the facility, and the extent of areas potentially impacted by the release. During this assessment, OROs should consider the use of agricultural and watershed data within the 50-mile EPZ. The radiological impacts on the food and water should then be compared to the appropriate ingestion PAGs contained in the ORO's plan and/or procedures. (The plan and/or procedures may contain PAGs based on specific dose commitment criteria or based on criteria as recommended by current Food and Drug Administration guidance.) Timely and appropriate recommendations should be provided to the ORO decision-makers group for implementation decisions. As time permits, the ORO may also include a comparison of taking or not taking a given action on the resultant ingestion pathway dose commitments.

The ORO should demonstrate timely decisions to minimize radiological impacts from the ingestion pathway, based on the given assessments and other information available. Any such decisions should be communicated and, to the extent practical, coordinated with neighboring and local OROs.

OROs should use Federal resources, as identified in the Federal Radiological Emergency Response Plan (FRERP), and other resources (e.g., compacts, nuclear insurers, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Sub-Element 2.e.—Radiological Assessment and Decision-Making Concerning Relocation, Re-Entry, and Return*

**Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to make decisions on relocation, re-entry, and return of the general public. These decisions are essential for the protection of the public

from the direct long-term exposure to deposited radioactive materials from a severe accident at a nuclear power plant.

**Criterion 2.e.1:** Timely relocation, re-entry, and return decisions are made and coordinated as appropriate, based on assessments of the radiological conditions and criteria in the ORO's plan and/or procedures. (NUREG-0654, I.10; M.1)

**Extent of Play**

**Relocation:** OROs should demonstrate the capability to estimate integrated dose in contaminated areas and to compare these estimates with PAGs, apply decision criteria for relocation of those individuals in the general public who have not been evacuated but where projected doses are in excess of relocation PAGs, and control access to evacuated and restricted areas. Decisions are made for relocating members of the evacuated public who lived in areas that now have residual radiation levels in excess of the PAGs. Determination of areas to be restricted should be based on factors such as the mix of radionuclides in deposited materials, calculated exposure rates vs. the PAGs, and field samples of vegetation and soil analyses.

**Re-entry:** Decisions should be made regarding the location of control points and policies regarding access and exposure control for emergency workers and members of the general public who need to temporarily enter the evacuated area to perform specific tasks or missions.

Examples of control procedures are: the assignment of, or checking for, direct-reading and non-direct-reading dosimetry for emergency workers; questions regarding the individual's objectives and locations expected to be visited and associated time frames; availability of maps and plots of radiation exposure rates; advice on areas to avoid; and procedures for exit including: monitoring of individuals, vehicles, and equipment; decision criteria regarding decontamination; and proper disposition of emergency worker dosimetry and maintenance of emergency worker radiation exposure records.

Responsible OROs should demonstrate the capability to develop a strategy for authorized re-entry of individuals into the restricted zone, based on established decision criteria. OROs should demonstrate the capability to modify those policies for security purposes (e.g., police patrols), for maintenance of essential services (e.g., fire protection and utilities), and for other critical functions. They should

demonstrate the capability to use decision making criteria in allowing access to the restricted zone by the public for various reasons, such as to maintain property (e.g., to care for farm animals or secure machinery for storage), or to retrieve important possessions. Coordinated policies for access and exposure control should be developed among all agencies with roles to perform in the restricted zone. OROs should demonstrate the capability to establish policies for provision of dosimetry to all individuals allowed to re-enter the restricted zone. The extent that OROs need to develop policies on re-entry will be determined by scenario events.

**Return:** Decisions are to be based on environmental data and political boundaries or physical/geological features, which allow identification of the boundaries of areas to which members of the general public may return. Return is permitted to the boundary of the restricted area that is based on the relocation PAG.

Other factors that the ORO should consider are, for example: conditions that permit the cancellation of the Emergency Classification Level and the relaxation of associated restrictive measures; basing return recommendations (i.e., permitting populations that were previously evacuated to reoccupy their homes and businesses on an unrestricted basis) on measurements of radiation from ground deposition; and the capability to identify services and facilities that require restoration within a few days and to identify the procedures and resources for their restoration. Examples of these services and facilities are: medical and social services, utilities, roads, schools, and intermediate term housing for relocated persons.

**Evaluation Area 3**

**Protective Action Implementation**

*Sub-Element 3.a—Implementation of Emergency Worker Exposure Control Intent*

This sub-element is derived from NUREG-0654, which provides that OROs should have the capability to provide for the following: distribution, use, collection, and processing of direct-reading dosimetry and permanent record dosimetry; the reading of direct-reading dosimetry by emergency workers at appropriate frequencies; maintaining a radiation dose record for each emergency worker; and establishing a decision chain or authorization procedure for emergency workers to incur radiation exposures in

excess of protective action guides, always applying the ALARA (As Low As is Reasonably Achievable) principle as appropriate.

Criterion 3.a.1: The OROs issue appropriate dosimetry and procedures, and manage radiological exposure to emergency workers in accordance with the plans and procedures. Emergency workers periodically and at the end of each mission read their dosimeters and record the readings on the appropriate exposure record or chart. (NUREG-0654, K.3.a,b)

#### Extent of Play

OROs should demonstrate the capability to provide appropriate direct-reading and permanent record dosimetry, dosimeter chargers, and instructions on the use of dosimetry to emergency workers. For evaluation purposes, appropriate direct-reading dosimetry is defined as dosimetry that allows individual(s) to read the administrative reporting limits (that are pre-established at a level low enough to consider subsequent calculation of Total Effective Dose Equivalent) and maximum exposure limits (for those emergency workers involved in life saving activities) contained in the ORO's plans and procedures.

Each emergency worker should have the basic knowledge of radiation exposure limits as specified in the ORO's plan and/or procedures. Procedures to monitor and record dosimeter readings and to manage radiological exposure control should be demonstrated.

During a plume phase exercise, emergency workers should demonstrate the procedures to be followed when administrative exposure limits and turn-back values are reached. The emergency worker should report accumulated exposures during the exercise as indicated in the plans and procedures. OROs should demonstrate the actions described in the plan and/or procedures by determining whether to replace the worker, to authorize the worker to incur additional exposures or to take other actions. If scenario events do not require emergency workers to seek authorizations for additional exposure, evaluators should interview at least two emergency workers, to determine their knowledge of whom to contact in the event authorization is needed and at what exposure levels. Emergency workers may use any available resources (e.g., written procedures and/or co-workers) in providing responses.

Although it is desirable for all emergency workers to each have a direct-reading dosimeter, there may be

situations where team members will be in close proximity to each other during the entire mission and adequate control of exposure can be effected for all members of the team by one dosimeter worn by the team leader. Emergency workers who are assigned to low exposure rate areas, e.g., at reception centers, counting laboratories, emergency operations centers, and communications centers, may have individual direct-reading dosimeters or they may be monitored by dosimeters strategically placed in the work area. It should be noted that, even in these situations, each team member must still have their own permanent record dosimetry. Individuals without specific radiological response missions, such as farmers for animal care, essential utility service personnel, or other members of the public who must re-enter an evacuated area following or during the plume passage, should be limited to the lowest radiological exposure commensurate with completing their missions.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 3.b—Implementation of KI Decision*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to provide radioprotective drugs for emergency workers, institutionalized individuals, and, if in the plan and/or procedures, to the general public for whom immediate evacuation may not be feasible, very difficult, or significantly delayed. While it is necessary for OROs to have the capability to provide KI to emergency workers and institutionalized individuals, the provision of KI to the general public is an ORO option and is reflected in ORO's plans and procedures. Provisions should include the availability of adequate quantities, storage, and means of the distribution of radioprotective drugs.

Criterion 3.b.1: KI and appropriate instructions are available should a decision to recommend use of KI be made. Appropriate recordkeeping of the administration of KI for emergency workers and institutionalized individuals (not the general public) is maintained. (NUREG-0654, J.10.e)

#### Extent of Play

Offsite Response Organizations (ORO) should demonstrate the capability to make KI available to emergency workers, institutionalized individuals, and, where provided for in the ORO plan and/or procedures, to members of the general public. OROs should demonstrate the capability to accomplish distribution of KI consistent with decisions made. Organizations should have the capability to develop and maintain lists of emergency workers and institutionalized individuals who have ingested KI, including documentation of the date(s) and time(s) they were instructed to ingest KI. The ingestion of KI recommended by the designated ORO health official is voluntary. For evaluation purposes, the actual ingestion of KI is not necessary. OROs should demonstrate the capability to formulate and disseminate appropriate instructions on the use of KI for those advised to take it. If a recommendation is made for the general public to take KI, appropriate information should be provided to the public by the means of notification specified in the ORO's plan and/or procedures.

Emergency workers should demonstrate the basic knowledge of procedures for the use of KI whether or not the scenario drives the use of KI. This can be accomplished by an interview with the evaluator.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-element 3.c—Implementation of Protective Actions for Special Populations*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to implement protective action decisions, including evacuation and/or sheltering, for all special populations. Focus is on those special populations that are (or potentially will be) affected by a radiological release from a nuclear power plant.

Criterion 3.c.1: Protective action decisions are implemented for special populations other than schools within areas subject to protective actions. (NUREG-0654, J.10.c,d,g)

#### Extent of Play

Applicable OROs should demonstrate the capability to alert and notify (e.g.,

provide protective action recommendations and emergency information and instructions) special populations (hospitals, nursing homes, correctional facilities, mobility impaired individuals, transportation dependent, etc.). OROs should demonstrate the capability to provide for the needs of special populations in accordance with the ORO's plans and procedures.

Contact with special populations and reception facilities may be actual or simulated, as agreed to in the Extent of Play. Some contacts with transportation providers should be actual, as negotiated in the extent of play. All actual and simulated contacts should be logged.

All implementing activities associated with protective actions for special populations must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

Criterion 3.c.2: OROs/School officials decide upon and implement protective actions for schools. (NUREG-0654, J.10.c,d,g)

#### Extent of Play

Applicable OROs should demonstrate the capability to alert and notify all public school systems/districts of emergency conditions that are expected to or may necessitate protective actions for students. Contacts with public school systems/districts must be actual.

In accordance with plans and/or procedures, OROs and/or officials of public school systems/districts should demonstrate the capability to make prompt decisions on protective actions for students. Officials should demonstrate that the decision making process for protective actions considers (i.e., either accepts automatically or gives heavy weight to) protective action recommendations made by ORO personnel, the ECL at which these recommendations are received, preplanned strategies for protective actions for that ECL, and the location of students at the time (e.g., whether the students are still at home, en route to the school, or at the school).

Public school systems/districts shall demonstrate the ability to implement protective action decisions for students. The demonstration shall be made as follows: At least one school in each affected school system or district, as appropriate, needs to demonstrate the implementation of protective actions. The implementation of canceling the school day, dismissing early, or sheltering should be simulated by describing to evaluators the procedures

that would be followed. If evacuation is the implemented protective action, all activities to coordinate and complete the evacuation of students to reception centers, congregate care centers, or host schools may actually be demonstrated or accomplished through an interview process. If accomplished through an interview process, appropriate school personnel including decision making officials (e.g., superintendent/principal, transportation director/bus dispatcher), and at least one bus driver (and the bus driver's escort, if applicable) should be available to demonstrate knowledge of their role(s) in the evacuation of school children. Communications capabilities between school officials and the buses, if required by the plan and/or procedures, should be verified.

Officials of the school system(s) should demonstrate the capability to develop and provide timely information to OROs for use in messages to parents, the general public, and the media on the status of protective actions for schools.

The provisions of this criterion also apply to any private schools, private kindergartens and day care centers that participate in REP exercises pursuant to the ORO's plans and procedures as negotiated in the Extent of Play Agreement.

All activities must be based on the ORO's plans and procedures and completed, as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 3.d.—Implementation of Traffic and Access Control*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to implement protective action plans, including relocation and restriction of access to evacuated/sheltered areas. This sub-element focuses on selecting, establishing, and staffing of traffic and access control points and removal of impediments to the flow of evacuation traffic.

Criterion 3.d.1: Appropriate traffic and access control is established. Accurate instructions are provided to traffic and access control personnel. (NUREG-0654, J.10.g,j)

##### Extent of Play

OROs should demonstrate the capability to select, establish, and staff appropriate traffic and access control points, consistent with protective action decisions (for example, evacuating, sheltering, and relocation), in a timely

manner. OROs should demonstrate the capability to provide instructions to traffic and access control staff on actions to take when modifications in protective action strategies necessitate changes in evacuation patterns or in the area(s) where access is controlled.

Traffic and access control staff should demonstrate accurate knowledge of their roles and responsibilities. This capability may be demonstrated by actual deployment or by interview, in accordance with the extent of play agreement.

In instances where OROs lack authority necessary to control access by certain types of traffic (rail, water, and air traffic), they should demonstrate the capability to contact the State or Federal agencies with authority to control access.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

Criterion 3.d.2: Impediments to evacuation are identified and resolved. (NUREG-0654, J.10.k)

#### Extent of Play

OROs should demonstrate the capability, as required by the scenario, to identify and take appropriate actions concerning impediments to evacuation. Actual dispatch of resources to deal with impediments, such as wreckers, need not be demonstrated; however, all contacts, actual or simulated, should be logged.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 3.e.—Implementation of Ingestion Pathway Decisions*

##### Intent

This sub-element is derived from NUREG-0654, which provides that OROs should have the capability to implement protective actions, based on criteria recommended by current Food and Drug Administration guidance, for the ingestion pathway zone (IPZ), the area within an approximate 50-mile radius of the nuclear power plant. This sub-element focuses on those actions required for implementation of protective actions.

Criterion 3.e.1: The ORO demonstrates the availability and appropriate use of adequate information regarding water, food supplies, milk, and agricultural production within the ingestion

exposure pathway emergency planning zone for implementation of protective actions. NUREG-0654, J.9, 11)

#### Extent of Play

Applicable OROs should demonstrate the capability to secure and utilize current information on the locations of dairy farms, meat and poultry producers, fisheries, fruit growers, vegetable growers, grain producers, food processing plants, and water supply intake points to implement protective actions within the ingestion pathway EPZ. OROs should use Federal resources as identified in the FRERP, and other resources (e.g., compacts, nuclear insurers, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

**Criterion 3.e.2:** Appropriate measures, strategies, and pre-printed instructional material are developed for implementing protective action decisions for contaminated water, food products, milk, and agricultural production. (NUREG-0654, J.9, 11)

#### Extent of Play

Development of measures and strategies for implementation of IPZ protective actions should be demonstrated by formulation of protective action information for the general public and food producers and processors. This includes the capability for the rapid reproduction and distribution of appropriate reproduction-ready information and instructions to pre-determined individuals and businesses. OROs should demonstrate the capability to control, restrict or prevent distribution of contaminated food by commercial sectors. Exercise play should include demonstration of communications and coordination between organizations to implement protective actions. However, actual field play of implementation activities may be simulated. For example, communications and coordination with agencies responsible for enforcing food controls within the IPZ should be demonstrated, but actual communications with food producers and processors may be simulated.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or

otherwise indicated in the extent of play agreement.

#### *Sub-Element 3.f—Implementation of Relocation, Re-Entry, and Return Decisions*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should demonstrate the capability to implement plans, procedures, and decisions for relocation, re-entry, and return. Implementation of these decisions is essential for the protection of the public from the direct long-term exposure to deposited radioactive materials from a severe accident at a commercial nuclear power plant.

**Criterion 3.f.1:** Decisions regarding controlled re-entry of emergency workers and relocation and return of the public are coordinated with appropriate organizations and implemented. (NUREG-0654, M.1, 3)

##### Extent of Play

**Relocation:** OROs should demonstrate the capability to coordinate and implement decisions concerning relocation of individuals, not previously evacuated, to an area where radiological contamination will not expose the general public to doses that exceed the relocation PAGs. OROs should also demonstrate the capability to provide for short-term or long-term relocation of evacuees who lived in areas that have residual radiation levels above the PAGs.

Areas of consideration should include the capability to communicate with OROs regarding timing of actions, notification of the population of the procedures for relocation, and the notification of, and advice for, evacuated individuals who will be converted to relocation status in situations where they will not be able to return to their homes due to high levels of contamination. OROs should also demonstrate the capability to communicate instructions to the public regarding relocation decisions.

**Re-entry:** OROs should demonstrate the capability to control re-entry and exit of individuals who need to temporarily re-enter the restricted area, to protect them from unnecessary radiation exposure and for exit of vehicles and other equipment to control the spread of contamination outside the restricted area. Monitoring and decontamination facilities will be established as appropriate.

Examples of control procedure subjects are: (1) The assignment of, or checking for, direct-reading and non-

direct-reading dosimetry for emergency workers; (2) questions regarding the individuals' objectives and locations expected to be visited and associated timeframes; (3) maps and plots of radiation exposure rates; (4) advice on areas to avoid; and procedures for exit, including monitoring of individuals, vehicles, and equipment, decision criteria regarding contamination, proper disposition of emergency worker dosimetry, and maintenance of emergency worker radiation exposure records.

**Return:** OROs should demonstrate the capability to implement policies concerning return of members of the public to areas that were evacuated during the plume phase. OROs should demonstrate the capability to identify and prioritize services and facilities that require restoration within a few days, and to identify the procedures and resources for their restoration. Examples of these services and facilities are medical and social services, utilities, roads, schools, and intermediate term housing for relocated persons.

Communications among OROs for relocation, re-entry, and return may be simulated; however all simulated or actual contacts should be documented. These discussions may be accomplished in a group setting.

OROs should use Federal resources as identified in the FRERP, and other resources (e.g., compacts, nuclear insurers, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### **Evaluation Area 4**

##### **Field Measurement And Analysis**

#### *Sub-Element 4.a—Plume Phase Field Measurements and Analyses*

##### Intent

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to deploy field teams with the equipment, methods, and expertise necessary to determine the location of airborne radiation and particulate deposition on the ground from an airborne plume. In addition, NUREG-0654 indicates that OROs should have the capability to use field teams within the plume emergency planning zone to measure airborne

radioiodine in the presence of noble gases and to measure radioactive particulate material in the airborne plume. In the event of an accident at a nuclear power plant, the possible release of radioactive material may pose a risk to the nearby population and environment. Although accident assessment methods are available to project the extent and magnitude of a release, these methods are subject to large uncertainties. During an accident, it is important to collect field radiological data in order to help characterize any radiological release. This does not imply that plume exposure projections should be made from the field data. Adequate equipment and procedures are essential to such field measurement efforts.

Criterion 4.a.1: The field teams are equipped to perform field measurements of direct radiation exposure (cloud and ground shine) and to sample airborne radioiodine and particulates. (NUREG-0654, H.10; I.7, 8, 9)

#### Extent of Play

Field teams should be equipped with all instrumentation and supplies necessary to accomplish their mission. This should include instruments capable of measuring gamma exposure rates and detecting the presence of beta radiation. These instruments should be capable of measuring a range of activity and exposure, including radiological protection/exposure control of team members and detection of activity on the air sample collection media, consistent with the intended use of the instrument and the ORO's plans and procedures. An appropriate radioactive check source should be used to verify proper operational response for each low range radiation measurement instrument (less than 1 R/hr) and for high range instruments when available. If a source is not available for a high range instrument, a procedure should exist to operationally test the instrument before entering an area where only a high range instrument can make useful readings.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

Criterion 4.a.2: Field teams are managed to obtain sufficient information to help characterize the release and to control radiation exposure. (NUREG-0654, H.12; I.8, 11; J.10.a)

#### Extent of Play

Responsible Offsite Response Organizations (ORO) should demonstrate the capability to brief teams on predicted plume location and direction, travel speed, and exposure control procedures before deployment.

Field measurements are needed to help characterize the release and to support the adequacy of implemented protective actions or to be a factor in modifying protective actions. Teams should be directed to take measurements in such locations, at such times to provide information sufficient to characterize the plume and impacts.

If the responsibility to obtain peak measurements in the plume has been accepted by licensee field monitoring teams, with concurrence from OROs, there is no requirement for these measurements to be repeated by State and local monitoring teams. If the licensee teams do not obtain peak measurements in the plume, it is the ORO's decision as to whether peak measurements are necessary to sufficiently characterize the plume. The sharing and coordination of plume measurement information among all field teams (licensee, Federal, and ORO) is essential. Coordination concerning transfer of samples, including a chain-of-custody form, to a radiological laboratory should be demonstrated. OROs should use Federal resources as identified in the Federal Radiological Emergency Response Plan (FRERP), and other resources (e.g., compacts, utility, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

Criterion 4.a.3: Ambient radiation measurements are made and recorded at appropriate locations, and radioiodine and particulate samples are collected. Teams will move to an appropriate low background location to determine whether any significant (as specified in the plan and/or procedures) amount of radioactivity has been collected on the sampling media. (NUREG-0654, I. 9)

#### Extent of Play

Field teams should demonstrate the capability to report measurements and field data pertaining to the measurement of airborne radioiodine and particulates and ambient radiation to the field team coordinator, dose assessment, or other

appropriate authority. If samples have radioactivity significantly above background, the appropriate authority should consider the need for expedited laboratory analyses of these samples. OROs should share data in a timely manner with all appropriate OROs. All methodology, including contamination control, instrumentation, preparation of samples, and a chain-of-custody form for transfer to a laboratory, will be in accordance with the ORO's plan and/or procedures.

ORO's should use Federal resources as identified in the FRERP, and other resources (e.g., compacts, utility, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 4.b—Post Plume Phase Field Measurements and Sampling*

##### Intent

This sub-element is derived from NUREG-0654, which provides that OROs should have the capability to assess the actual or potential magnitude and locations of radiological hazards in the IPZ and for relocation, re-entry and return measures. This sub-element focuses on the collection of environmental samples for laboratory analyses that are essential for decisions on protection of the public from contaminated food and water and direct radiation from deposited materials.

Criterion 4.b.1: The field teams demonstrate the capability to make appropriate measurements and to collect appropriate samples (e.g., food crops, milk, water, vegetation, and soil) to support adequate assessments and protective action decision-making. (NUREG-0654, I.8; J.11)

##### Extent of Play

The ORO's field team should demonstrate the capability to take measurements and samples, at such times and locations as directed, to enable an adequate assessment of the ingestion pathway and to support re-entry, relocation, and return decisions. When resources are available, the use of aerial surveys and in-situ gamma measurement is appropriate. All methodology, including contamination control, instrumentation, preparation of samples, and a chain-of-custody form for transfer to a laboratory, will be in

accordance with the ORO's plan and/or procedures.

Ingestion pathway samples should be secured from agricultural products and water. Samples in support of relocation and return should be secured from soil, vegetation, and other surfaces in areas that received radioactive ground deposition.

OROs should use Federal resources as identified in the FRERP, and other resources (e.g., compacts, utility, nuclear insurers, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 4.c—Laboratory Operations*

##### **Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to perform laboratory analyses of radioactivity in air, liquid, and environmental samples to support protective action decision-making.

**Criterion 4.c.1:** The laboratory is capable of performing required radiological analyses to support protective action decisions. (NUREG-0654, C.3; J.11)

##### **Extent of Play**

The laboratory staff should demonstrate the capability to follow appropriate procedures for receiving samples, including logging of information, preventing contamination of the laboratory, preventing buildup of background radiation due to stored samples, preventing cross contamination of samples, preserving samples that may spoil (e.g., milk), and keeping track of sample identity. In addition, the laboratory staff should demonstrate the capability to prepare samples for conducting measurements.

The laboratory should be appropriately equipped to provide analyses of media, as requested, on a timely basis, of sufficient quality and sensitivity to support assessments and decisions as anticipated by the ORO's plans and procedures. The laboratory (laboratories) instrument calibrations should be traceable to standards provided by the National Institute of Standards and Technology. Laboratory methods used to analyze typical radionuclides released in a reactor incident should be as described in the

plans and procedures. New or revised methods may be used to analyze atypical radionuclide releases (e.g., transuranics or as a result of a terrorist event) or if warranted by circumstances of the event. Analysis may require resources beyond those of the ORO.

The laboratory staff should be qualified in radioanalytical techniques and contamination control procedures.

OROs should use Federal resources as identified in the FRERP, and other resources (e.g., compacts, utility, nuclear insurers, etc.), if available. Evaluation of this criterion will take into consideration the level of Federal and other resources participating in the exercise.

All activities must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

#### **Evaluation Area 5**

##### **Emergency Notification and Public Information**

#### *Sub-Element 5.a—Activation of the Prompt Alert and Notification System*

##### **Intent**

This sub-element is derived from NUREG-0654, which provides that OROs should have the capability to provide prompt instructions to the public within the plume pathway EPZ. Specific provisions addressed in this sub-element are derived from the Nuclear Regulatory Commission (NRC) regulations (10 CFR Part 50, Appendix E.IV.D.), and FEMA-REP-10, "Guide for the Evaluation of Alert and Notification systems for Nuclear Power Plants."

**Criterion 5.a.1:** Activities associated with primary alerting and notification of the public are completed in a timely manner following the initial decision by authorized offsite emergency officials to notify the public of an emergency situation. The initial instructional message to the public must include as a minimum the elements required by current FEMA REP guidance. (10 CFR Part 50, Appendix E.IV.D and NUREG-0654, E.5, 6,7)

##### **Extent of Play**

Responsible Offsite Response Organizations (ORO) should demonstrate the capability to sequentially provide an alert signal followed by an initial instructional message to populated areas (permanent resident and transient) throughout the 10-mile plume pathway EPZ. Following the decision to activate the alert and notification system, in accordance with

the ORO's plan and/or procedures, completion of system activation should be accomplished in a timely manner (will not be subject to specific time requirements) for primary alerting/notification. The initial message should include the elements required by current FEMA REP guidance.

For exercise purposes, timely is defined as "the responsible ORO personnel/representatives demonstrate actions to disseminate the appropriate information/instructions with a sense of urgency and without undue delay." If message dissemination is to be identified as not having been accomplished in a timely manner, the evaluator(s) will document a specific delay or cause as to why a message was not considered timely.

Procedures to broadcast the message should be fully demonstrated as they would in an actual emergency up to the point of transmission. Broadcast of the message(s) or test messages is not required. The alert signal activation may be simulated. However, the procedures should be demonstrated up to the point of actual activation. The capability of the primary notification system to broadcast an instructional message on a 24-hour basis should be verified during an interview with appropriate personnel from the primary notification system.

All activities for this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, except as noted above or otherwise indicated in the extent of play agreement.

**Criterion 5.a.2:** [Reserved]

**Criterion 5.a.3:** Activities associated with FEMA approved exception areas (where applicable) are completed within 45 minutes following the initial decision by authorized offsite emergency officials to notify the public of an emergency situation. Backup alert and notification of the public is completed within 45 minutes following the detection by the ORO of a failure of the primary alert and notification system. (NUREG-0654, E. 6, Appendix 3.B.2.c)

##### **Extent of Play**

Offsite Response Organizations (ORO) with FEMA-approved exception areas (identified in the approved Alert and Notification System Design Report) 5–10 miles from the nuclear power plant should demonstrate the capability to accomplish primary alerting and notification of the exception area(s) within 45 minutes following the initial decision by authorized offsite emergency officials to notify the public of an emergency situation. The 45-

minute clock will begin when the OROs make the decision to activate the alert and notification system for the first time for a specific emergency situation. The initial message should, at a minimum, include: a statement that an emergency exists at the plant and where to obtain additional information.

For exception area alerting, at least one route needs to be demonstrated and evaluated. The selected route(s) should vary from exercise to exercise. However, the most difficult route should be demonstrated at least once every six years. All alert and notification activities along the route should be simulated (that is, the message that would actually be used is read for the evaluator, but not actually broadcast) as agreed upon in the extent of play. Actual testing of the mobile public address system will be conducted at some agreed-upon location.

Backup alert and notification of the public should be completed within 45 minutes following the detection by the ORO of a failure of the primary alert and notification system. Backup route alerting only needs to be demonstrated and evaluated, in accordance with the ORO's plan and/or procedures and the extent of play agreement, if the exercise scenario calls for failure of any portion of the primary system(s), or if any portion of the primary system(s) actually fails to function. If demonstrated, only one route needs to be selected and demonstrated. All alert and notification activities along the route should be simulated (that is, the message that would actually be used is read for the evaluator, but not actually broadcast) as agreed upon in the extent of play. Actual testing of the mobile public address system will be conducted at some agreed-upon location.

All activities for this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, except as noted above or otherwise indicated in the extent of play agreement.

#### *Sub-Element 5.b—Emergency Information and Instructions for the Public and the Media*

##### **Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to disseminate to the public appropriate emergency information and instructions, including any recommended protective actions. In addition, NUREG-0654 provides that

OROs should ensure that the capability exists for providing information to the media. This includes the availability of a physical location for use by the media during an emergency. NUREG-0654 also provides that a system should be available for dealing with rumors. This system will hereafter be known as the public inquiry hotline.

Criterion 5.b.1: OROs provide accurate emergency information and instructions to the public and the news media in a timely manner. (NUREG-0654, E. 5, 7; G.3.a, G.4.c)

##### **Extent of Play**

Subsequent emergency information and instructions should be provided to the public and the media in a timely manner (will not be subject to specific time requirements). For exercise purposes, timely is defined as "the responsible ORO personnel/representatives demonstrate actions to disseminate the appropriate information/instructions with a sense of urgency and without undue delay." If message dissemination is to be identified as not having been accomplished in a timely manner, the evaluator(s) will document a specific delay or cause as to why a message was not considered timely.

The ORO should ensure that emergency information and instructions are consistent with protective action decisions made by appropriate officials. The emergency information should contain all necessary and applicable instructions (e.g., evacuation instructions, evacuation routes, reception center locations, what to take when evacuating, information concerning pets, shelter-in-place instructions, information concerning protective actions for schools and special populations, public inquiry telephone number, etc.) to assist the public in carrying out protective action decisions provided to them. The ORO should also be prepared to disclose and explain the Emergency Classification Level (ECL) of the incident. At a minimum, this information must be included in media briefings and/or media releases. OROs should demonstrate the capability to use language that is clear and understandable to the public within both the plume and ingestion pathway EPZs. This includes demonstration of the capability to use familiar landmarks and boundaries to describe protective action areas.

The emergency information should be all-inclusive by including previously identified protective action areas that are still valid, as well as new areas. The OROs should demonstrate the capability

to ensure that emergency information that is no longer valid is rescinded and not repeated by broadcast media. In addition, the OROs should demonstrate the capability to ensure that current emergency information is repeated at pre-established intervals in accordance with the plan and/or procedures.

OROs should demonstrate the capability to develop emergency information in a non-English language when required by the plan and/or procedures.

If ingestion pathway measures are exercised, OROs should demonstrate that a system exists for rapid dissemination of ingestion pathway information to pre-determined individuals and businesses in accordance with the ORO's plan and/or procedures.

OROs should demonstrate the capability to provide timely, accurate, concise, and coordinated information to the news media for subsequent dissemination to the public. This would include demonstration of the capability to conduct timely and pertinent media briefings and distribute media releases as the situation warrants. The OROs should demonstrate the capability to respond appropriately to inquiries from the news media. All information presented in media briefings and media releases should be consistent with protective action decisions and other emergency information provided to the public. Copies of pertinent emergency information (e.g., EAS messages and media releases) and media information kits should be available for dissemination to the media.

OROs should demonstrate that an effective system is in place for dealing with calls to the public inquiry hotline. Hotline staff should demonstrate the capability to provide or obtain accurate information for callers or refer them to an appropriate information source. Information from the hotline staff, including information that corrects false or inaccurate information when trends are noted, should be included, as appropriate, in emergency information provided to the public, media briefings, and/or media releases.

All activities for this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

**Evaluation Area 6****Support Operation/Facilities***Sub-Element 6.a—Monitoring and Decontamination of Evacuees and Emergency Workers and Registration of Evacuees***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to implement radiological monitoring and decontamination of evacuees and emergency workers, while minimizing contamination of the facility, and registration of evacuees at reception centers.

Criterion 6.a.1: The reception center/emergency worker facility has appropriate space, adequate resources, and trained personnel to provide monitoring, decontamination, and registration of evacuees and/or emergency workers. (NUREG-0654, J.10.h; J.12; K.5.a)

**Extent of Play**

Radiological monitoring, decontamination, and registration facilities for evacuees/emergency workers should be set up and demonstrated as they would be in an actual emergency or as indicated in the extent of play agreement. This would include adequate space for evacuees' vehicles. Expected demonstration should include  $\frac{1}{3}$  of the monitoring teams/portal monitors required to monitor 20% of the population allocated to the facility within 12 hours. Prior to using monitoring instrument(s), the monitor(s) should demonstrate the process of checking the instrument(s) for proper operation.

Staff responsible for the radiological monitoring of evacuees should demonstrate the capability to attain and sustain a monitoring productivity rate per hour needed to monitor the 20% emergency planning zone (EPZ) population planning base within about 12 hours. This monitoring productivity rate per hour is the number of evacuees that can be monitored per hour by the total complement of monitors using an appropriate monitoring procedure. A minimum of six individuals per monitoring station should be monitored, using equipment and procedures specified in the plan and/or procedures, to allow demonstration of monitoring, decontamination, and registration capabilities. The monitoring sequences for the first six simulated evacuees per monitoring team will be timed by the evaluators in order to determine whether the twelve-hour requirement

can be met. Monitoring of emergency workers does not have to meet the twelve-hour requirement. However, appropriate monitoring procedures should be demonstrated for a minimum of two emergency workers.

Decontamination of evacuees/emergency workers may be simulated and conducted by interview. The availability of provisions for separately showering should be demonstrated or explained. The staff should demonstrate provisions for limiting the spread of contamination. Provisions could include floor coverings, signs and appropriate means (e.g., partitions, roped-off areas) to separate clean from potentially contaminated areas. Provisions should also exist to separate contaminated and uncontaminated individuals, provide changes of clothing for individuals whose clothing is contaminated, and store contaminated clothing and personal belongings to prevent further contamination of evacuees or facilities. In addition, for any individual found to be contaminated, procedures should be discussed concerning the handling of potential contamination of vehicles and personal belongings.

Monitoring personnel should explain the use of action levels for determining the need for decontamination. They should also explain the procedures for referring evacuees who cannot be adequately decontaminated for assessment and follow up in accordance with the ORO's plans and procedures. Contamination of the individual will be determined by controller inject and not simulated with any low-level radiation source.

The capability to register individuals upon completion of the monitoring and decontamination activities should be demonstrated. The registration activities demonstrated should include the establishment of a registration record for each individual, consisting of the individual's name, address, results of monitoring, and time of decontamination, if any, or as otherwise designated in the plan. Audio recorders, camcorders, or written records are all acceptable means for registration.

All activities associated with this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless otherwise indicated in the extent of play agreement.

*Sub-Element 6.b—Monitoring and Decontamination of Emergency Worker Equipment***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) have the capability to implement radiological monitoring and decontamination of emergency worker equipment, including vehicles.

Criterion 6.b.1: The facility/ORO has adequate procedures and resources for the accomplishment of monitoring and decontamination of emergency worker equipment, including vehicles. (NUREG-0654, K.5.b)

**Extent of Play**

The monitoring staff should demonstrate the capability to monitor equipment, including vehicles, for contamination in accordance with the Offsite Response Organizations (ORO) plans and procedures. Specific attention should be given to equipment, including vehicles, that was in contact with individuals found to be contaminated. The monitoring staff should demonstrate the capability to make decisions on the need for decontamination of equipment, including vehicles, based on guidance levels and procedures stated in the plan and/or procedures.

The area to be used for monitoring and decontamination should be set up as it would be in an actual emergency, with all route markings, instrumentation, record keeping and contamination control measures in place. Monitoring procedures should be demonstrated for a minimum of one vehicle. It is generally not necessary to monitor the entire surface of vehicles. However, the capability to monitor areas such as air intake systems, radiator grills, bumpers, wheel wells, tires, and door handles should be demonstrated. Interior surfaces of vehicles that were in contact with individuals found to be contaminated should also be checked.

Decontamination capabilities, and provisions for vehicles and equipment that cannot be decontaminated, may be simulated and conducted by interview.

All activities associated with this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Sub-Element 6.c—Temporary Care of Evacuees***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) demonstrate the capability to establish relocation centers in host areas. Congregate care is normally provided in support of OROs by the American Red Cross (ARC) under existing letters of agreement.

Criterion 6.c.1: Managers of congregate care facilities demonstrate that the centers have resources to provide services and accommodations consistent with American Red Cross planning guidelines. (Found in MASS CARE—Preparedness Operations, ARC 3031) Managers demonstrate the procedures to assure that evacuees have been monitored for contamination and have been decontaminated as appropriate prior to entering congregate care facilities. (NUREG-0654, J.10.h, J.12)

**Extent of Play**

Under this criterion, demonstration of congregate care centers may be conducted out of sequence with the exercise scenario. The evaluator should conduct a walk-through of the center to determine, through observation and inquiries, that the services and accommodations are consistent with ARC 3031. In this simulation, it is not necessary to set up operations as they would be in an actual emergency. Alternatively, capabilities may be demonstrated by setting up stations for various services and providing those services to simulated evacuees. Given the substantial differences between demonstration and simulation of this objective, exercise demonstration expectations should be clearly specified in extent-of-play agreements.

Congregate care staff should also demonstrate the capability to ensure that evacuees have been monitored for contamination, have been decontaminated as appropriate, and have been registered before entering the facility. This capability may be determined through an interview process.

If operations at the center are demonstrated, material that would be difficult or expensive to transport (e.g.,

cots, blankets, sundries, and large-scale food supplies) need not be physically available at the facility (facilities).

However, availability of such items should be verified by providing the evaluator a list of sources with locations and estimates of quantities.

All activities associated with this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Sub-Element 6.d—Transportation and Treatment of Contaminated Injured Individuals***Intent**

This sub-element is derived from NUREG-0654, which provides that Offsite Response Organizations (ORO) should have the capability to transport contaminated injured individuals to medical facilities with the capability to provide medical services.

Criterion 6.d.1: The facility/ORO has the appropriate space, adequate resources, and trained personnel to provide transport, monitoring, decontamination, and medical services to contaminated injured individuals. (NUREG-0654, F.2; H.10; K.5.a, b; L.1, 4)

**Extent of Play**

Monitoring, decontamination, and contamination control efforts will not delay urgent medical care for the victim.

Offsite Response Organizations (ORO) should demonstrate the capability to transport contaminated injured individuals to medical facilities. An ambulance should be used for the response to the victim. However, to avoid taking an ambulance out of service for an extended time, any vehicle (e.g., car, truck, or van) may be utilized to transport the victim to the medical facility. Normal communications between the ambulance/dispatcher and the receiving medical facility should be demonstrated. If a substitute vehicle is used for transport to the medical facility, this communication must occur prior to releasing the ambulance from the drill. This communication would include reporting radiation monitoring results, if available. Additionally, the

ambulance crew should demonstrate, by interview, knowledge of where the ambulance and crew would be monitored and decontaminated, if required, or whom to contact for such information.

Monitoring of the victim may be performed prior to transport, done enroute, or deferred to the medical facility. Prior to using a monitoring instrument(s), the monitor(s) should demonstrate the process of checking the instrument(s) for proper operation. All monitoring activities should be completed as they would be in an actual emergency. Appropriate contamination control measures should be demonstrated prior to and during transport and at the receiving medical facility.

The medical facility should demonstrate the capability to activate and set up a radiological emergency area for treatment. Equipment and supplies should be available for the treatment of contaminated injured individuals.

The medical facility should demonstrate the capability to make decisions on the need for decontamination of the individual, to follow appropriate decontamination procedures, and to maintain records of all survey measurements and samples taken. All procedures for the collection and analysis of samples and the decontamination of the individual should be demonstrated or described to the evaluator.

All activities associated with this criterion must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise indicated in the extent of play agreement.

*Frequency for Evaluation of New Criteria*

The REP-14 objectives are currently evaluated at the frequency described on Pages C-2.3 and C-2.4 of REP-14. Adoption of the new Exercise Evaluation Areas renders these pages obsolete. Table 2 establishes the minimum frequency with each of the Exercise Evaluation Areas would be exercised. FEMA is open to ORO proposals to voluntarily exercise certain criteria more frequently than the minimums listed below.

TABLE 2.—FEDERAL EVALUATION PROCESS MATRIX

Evaluation Area and Sub-Elements	Consolidates REP-14 objective	Minimum frequency <sup>6</sup>
1. Emergency Operations Management .....	1, 2, 3, 4, 5, 8, 14, 17, 30.	
a. Mobilization .....	.....	Every Exercise
b. Facilities .....	.....	Every Exercise <sup>1</sup>

TABLE 2.—FEDERAL EVALUATION PROCESS MATRIX—Continued

Evaluation Area and Sub-Elements	Consolidates REP-14 objective	Minimum frequency <sup>6</sup>
c. Direction and Control .....	.....	Every Exercise <sup>1</sup>
d. Communications Equipment .....	.....	Every Exercise <sup>1</sup>
e. Equipment and Supplies to Support Operations .....	.....	Every Exercise <sup>1</sup>
2. Protective Action Decisionmaking .....	5, 7, 9, 14, 15, 16, 26, 28.	
a. Emergency Worker Exposure Control .....	.....	Every Exercise
b. Radiological Assessment & Protective Action Recommendations & Decisions for the Plume Phase of the Emergency.	.....	Every Exercise
c. Protective Action Decisions for the Protection of Special Populations.	.....	Every Exercise
d. Radiological Assessment & Decisionmaking for the Ingestion Exposure Pathway <sup>2</sup> .	.....	Once in 6 yrs.
e. Radiological Assessment & Decisionmaking Concerning Relocation, Re-entry, and Return <sup>2</sup> .	.....	Once in 6 yrs.
3. Protective Action Implementation .....	5, 11, 14, 15, 16, 17, 27, 29.	
a. Implementation of Emergency Worker Exposure Control ..	.....	Every Exercise
b. Implementation of KI Decision .....	.....	Once in 6 yrs.
c. Implementation of Protective Actions for Special Populations.	.....	Once in 6 yrs. <sup>3</sup>
d. Implementation of Traffic and Access Control <sup>4</sup> .....	.....	Every Exercise
e. Implementation of Ingestion Pathway Decisions .....	.....	Once in 6 yrs.
f. Implementation of Relocation, Re-entry, and Return Decisions.	.....	Once in 6 yrs.
4. Field Measurement and Analysis .....	6, 8, 24, 25.	
a. Plume Phase Field Measurements & Analysis .....	.....	Every Full Participation Exercise <sup>6</sup>
b. Post Plume Phase Field Measurements and Sampling .....	.....	Once in 6 yrs.
c. Laboratory Operations .....	.....	Once in 6 yrs.
5. Emergency Notification and Public Information .....	10, 11, 12, 13.	
a.1 Activation of the Prompt Alert and Notification System ...	.....	Every Exercise
a.3 Notification of exception areas and/or Back-up Alert and Notification System within 45 minutes.	.....	Every Exercise-as needed
b. Emergency Information & Instructions for the Public and the Media.	.....	Every Exercise
6. Support Operations/Facilities .....	18, 19, 20, 21, 22.	
a. Monitoring & Decontamination of Evacuees and Emergency Workers & Registration of Evacuees.	.....	Once in 6 yrs. <sup>3</sup>
b. Monitoring & Decontamination of Emergency Worker Equipment <sup>3</sup> .	.....	Once in 6 yrs. <sup>3</sup>
c. Temporary Care of Evacuees <sup>5</sup> .....	.....	Once in 6 yrs. <sup>5</sup>
d. Transportation and Treatment of Contaminated Individuals.	.....	Every Exercise

<sup>1</sup> See evaluation criteria for specific requirements.

<sup>2</sup> The plume phase and the post-plume phase (ingestion, relocation, re-entry and return) can be demonstrated separately.

<sup>3</sup> All facilities must be evaluated once during the six-year exercise cycle.

<sup>4</sup> Physical deployment of resources is not necessary.

<sup>5</sup> Facilities managed by the American Red Cross (ARC), under the ARC/FEMA Memorandum of Understanding, will be evaluated once when designated or when substantial changes occur; all other facilities not managed by the ARC must be evaluated once in the six-year exercise cycle.

<sup>6</sup> Each State within the 10-mile EPZ of a commercial nuclear power site shall fully participate in an exercise jointly with the licensee and appropriate local governments at least every two years. Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every two years. When not fully participating in an exercise at a site, the State shall partially participate at that site to support the full participation of the local governments.

Dated: September 6, 2001.

**Lacy E. Suiter,**

*Assistant Director, Readiness, Response and Recovery Directorate.*

[FR Doc. 01-22928 Filed 9-11-01; 8:45 am]

BILLING CODE 6718-06-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Radiological Emergency Preparedness: Alert and Notification

**AGENCY:** Federal Emergency  
Management Agency.

### **ACTION:** Notice.

**SUMMARY:** FEMA is issuing revised guidance concerning the required content of an initial notification to the public in a plume Emergency Planning Zone (EPZ) following an incident at a nuclear power plant.

**DATES:** This guidance is effective October 1, 2001.

### **FOR FURTHER INFORMATION CONTACT:**

Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Hazards Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472;

(202) 646-3664, or (e-mail)  
*vanessa.quinn@fema.gov*.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA), through its Radiological Emergency Preparedness (REP) program, reviews the emergency response plans of Offsite Response Organizations (OROs), which are the State and local emergency management agencies responsible for responding to incidents involving nuclear power plants. FEMA also evaluates exercises that test the capability of OROs to perform in accordance with the provisions of their plans. These activities are undertaken

pursuant to FEMA regulations, which appear in Part 350 of Title 44 of the Code of Federal Regulations, and a Memorandum of Understanding between FEMA and the Nuclear Regulatory Commission, which appears at 44 CFR Part 353, Appendix A.

FEMA requires that OROs demonstrate their ability to communicate effectively with the public following an incident at a nuclear power plant. One of the components of effective communications is the delivery of an initial alert and notification message directed to persons in the EPZ.<sup>1</sup> We address how this initial notification should be given to the public in an EPZ in several guidance documents. These include the joint *FEMA/Nuclear Regulatory Commission Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants (NUREG-0654/REP-1, Rev. 1)*, dated November 1980<sup>2</sup> and *FEMA's Guidance for Providing Emergency Information and Instructions to the Public for Radiological Emergencies Using the New Emergency Alert System (EAS)*, dated February 2, 1999.<sup>3</sup>

FEMA regulations require that planning standards and evaluation criteria in NUREG-0654/FEMA-REP-1, Rev. 1,<sup>4</sup> and the Nuclear Regulatory Commission's emergency planning rule<sup>5</sup> are to be used in evaluating ORO plans and capabilities. While both the Nuclear Regulatory Commission's emergency planning rule and NUREG-0654/FEMA REP-1, Rev. 1 contemplate that initial notification messages will be made in a timely manner, neither prescribe the content of the initial notification message.<sup>6</sup>

<sup>1</sup> The term EPZ is defined in 44 CFR § 350.2(g). The plume EPZ is generally a 10-mile radius around the nuclear power plant.

<sup>2</sup> Planning Standard E, evaluation criterion E.7.

<sup>3</sup> Attachment "B" to Memorandum for FEMA Regional Directors and Regional Assistance Committee Chairs from Kay C. Goss, Associate Director for Preparedness, Training and Exercises. The attachment can be viewed at <http://www.fema.gov/pte/rep/easrep.htm>. (viewed August 31, 2001). This document is referred to as the "February 2, 1999 Guidance."

<sup>4</sup> 44 CFR 350.5.

<sup>5</sup> 10 CFR 50.47, 10 CFR Part 50 (Appendix E) and Part 70.

<sup>6</sup> Planning Standard E, evaluation criteria E.7 provides that "Each [ORO] shall provide written messages intended for the public, consistent with the [nuclear power plant's classification scheme. In particular, draft messages to the public giving instructions with regard to specific protective actions to be taken by occupants of affected areas shall be prepared and included as part of the State and local [emergency response plans]. Such messages should include the appropriate aspects of sheltering, ad hoc respiratory protection, e.g., handkerchief over mouth, thyroid blocking or evacuation \* \* \*

## Former Guidance

On February 2, 1999, the Associate Director of FEMA for Preparedness, Training, and Exercises issued guidance indicating that initial messages transmitted through the EAS must contain the following five items:

1. Identification of the State or local government organization and the official with the authority for providing the EAS alert and message.
2. Identification of the commercial nuclear power plant, appropriate conditions at the plant (e.g., no release, potential for release or actual release and wind direction);
3. Call attention to REP-specific emergency information (e.g., brochures and information in telephone books) for use by the general public during an emergency.
4. Call attention to the possibility that a protective action may need to be taken by affected populations; and
5. Include a closing statement asking the affected and potentially affected population to stay tuned to [the] EAS station(s) for additional information. This additional information, when necessary, could be in the form of a "Special News Broadcast" that would, as soon as possible, follow the EAS message.

## Revised Guidance

Effective October 1, 2001, the initial notification to the public in an EPZ of an incident at a nuclear power plant must contain the following elements:

1. Identification of the State or local government organization and the official with the authority for providing the alert signal and instructional message;
2. Identification of the commercial nuclear power plant and a statement that an emergency exists at the plant;
3. Reference to Radiological Emergency Preparedness specific emergency information (e.g. brochures and information in telephone books) for use by the general public during an emergency; and
4. A closing statement asking that the affected and potentially affected population stay tuned for additional information or that the population tune to another station for additional information.

The revised guidance addresses the minimum content of the initial message that must be given to the EPZ population. This message is intended to alert the public in the EPZ of the need to be attentive to the situation at the nuclear power plant. Other information that supports public health and safety objectives, including the ECL and information concerning protective

actions, may also be included in the initial message at the ORO's discretion.

This guidance does not diminish the ORO's obligation to provide complete and candid information—including a plain language explanation of the situation at the plant, the ECL, an explanation of the ECL, and details concerning any protective action decisions—to the news media for use in special news broadcasts that provide more detailed information to the population of an EPZ and general news coverage. This guidance addresses only the information that must be disseminated in the initial notification message.

## Consideration of Public Comments

FEMA sought public comment in the June 11, 2001 edition of the **Federal Register** (66 FR 31362) about whether it should revise the February 2, 1999 guidance. We indicated that we were specifically considering whether to continue to require that OROs refer to the ECL and alert the public to the possibility that a protective action decision (sometimes also referred to as a "protective action recommendation") will be subsequently issued by the ORO. However, we also encouraged commenters to suggest other appropriate revisions to the February 2, 1999 guidance.

We received twenty-five comments in response to the **Federal Register** notice. Seventeen commenters supported the proposal published in the June 11 **Federal Register**. Six opposed the proposal. The position of the remaining two commenters could not be determined.

The commenters that supported the proposal noted:

- The initial message should be used principally as an alerting mechanism, not as an informational tool;
- The public should not be expected to understand the meaning of an ECL. Identification of the ECL might even unduly alarm members of the public. This information can be included in follow-up public information, which is more detailed.
- Announcing an ECL in the initial message will result in a large number of unnecessary, non-emergency 911 calls, especially from people outside of the EPZ who do not receive the public information materials that are distributed to people within the EPZ.
- Information accompanying protective action decisions is normally detailed and not suitable for inclusion in the Emergency Alert System format.
- FEMA should allow the OROs to include in the initial EAS message the information that they deem necessary.

Two of the six opposing comments came from individuals. One of these comments stated, "Nothing would be gained by giving the public less information in the initial message following a nuclear disaster." We respectfully disagree with the commenter. The initial message is intended to alert people in the EPZ of the need to be attentive to the situation at the nuclear power plant. We believe it is more important that the OROs utilize the EAS to provide the most essential information, rather than the greatest quantity of information.

Another commenter suggested that FEMA should be more stringent in the information that it requires OROs to give the public. This commenter, who appears to reside outside of the applicable plume EPZ, suggested that the public was not provided with sufficient information about a February 2000 incident at the Indian Point nuclear power plant in New York State. As noted in the June 11 **Federal Register** notice, FEMA's proposal to change the required content of the initial message does not detract from an ORO's obligation to provide the news media

and the public with complete and candid information.

Several emergency management agencies also opposed the proposal. These commenters argued that exclusion of the ECL and warnings that a protective action decision may be forthcoming provides the public with an ambiguous picture and may cause inappropriate responses. A State argued that the ECL informed parents of school children that the school was taking certain predetermined actions. However, two counties in that State submitted comments urging FEMA to not require a reference to the ECL in the initial message. Another commenter stated "Nothing less than the five elements currently in place are acceptable."

FEMA's decision accommodates these commenters. We believe that the OROs are in a better position than FEMA to decide which information must be included in the initial message to the OROs' constituents. However, we are concerned about the apparent disagreement between a State and two of its counties about what information should be included. We encourage the State and the affected counties to come

to a common understanding on this issue.

#### **Coordination With the Nuclear Regulatory Commission**

FEMA conducts the REP program, in part, under authority of a Memorandum of Understanding with the Nuclear Regulatory Commission. The text of the current Memorandum of Understanding is published in Appendix A to 44 CFR Part 353. Section E of the Memorandum of Understanding specifies that each agency will provide an opportunity for the other agency to review and comment on emergency planning and preparedness guidance (including interpretations of agreed joint guidance) prior to 2 adoption as formal agency guidance. On August 10, 2001, the Nuclear Regulatory Commission staff provided written comments on the June 11, 2001, **Federal Register** alert and notification notice. These comments were supportive of the revised guidance.

Dated: September 6, 2001.

**Lacy E. Suiter,**

*Assistant Director, Readiness, Response and Recovery Directorate*

[FR Doc. 01-22929 Filed 9-11-01; 8:45 am]

**BILLING CODE 6718-06-P**



# Federal Register

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**Wednesday,  
September 12, 2001**

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## **Part III**

### **Department of Housing and Urban Development**

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**Office of Federal Housing and Enterprise  
Oversight**

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**12 CFR Parts 1710 et al.  
Executive Compensation, Corporate  
Governance and Flood Insurance; Final  
Rule and Proposed Rules**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of Federal Housing Enterprise Oversight****12 CFR Part 1770**

RIN 2550-AA13

**Executive Compensation****AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.**ACTION:** Final regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight ("OFHEO") is issuing a final regulation that clarifies the procedures OFHEO employs in overseeing compensation provided by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, "the Enterprises") to their executive officers. The final regulation formalizes processes by which OFHEO performs its separate reviews of executive compensation and termination benefits. The processes require the submission of relevant information by the Enterprises on a timely basis to enable OFHEO to efficiently carry out its executive compensation functions.

**EFFECTIVE DATE:** The effective date of this regulation is October 29, 2001.

**FOR FURTHER INFORMATION CONTACT:** David W. Roderer, Deputy General Counsel, telephone (202) 414-3804; Christine C. Dion, Associate General Counsel, telephone (202) 414-3838 (not a toll-free number); or Brian M. Doherty, Senior Policy Analyst, telephone (202) 414-8922, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street NW, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****I. Background**

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (the "Act"),<sup>1</sup> established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. OFHEO is the safety and soundness regulator of two of the nation's largest housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home

Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, the "charter acts"),<sup>2</sup> in part to accommodate OFHEO's statutory supervisory powers.

Included in the supervisory responsibilities of the Director of OFHEO (the "Director") is oversight of compensation provided by the Enterprises to their respective executive officers. Briefly, the Director's statutory oversight of executive compensation involves two statutory mandates: (1) The prohibition of excessive compensation, as required by the Act; and (2) the prior review of termination benefits, as required by the charter acts. Notably, the differing statutes use similar but not identical terms in delineating the standards and identifying the different comparator groups to be used in these matters.

Specifically, the Act requires the Director to prohibit the Enterprises from providing compensation to any executive officer that is not reasonable and comparable with that paid by similar businesses to executives doing similar work. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies.<sup>3</sup>

The charter acts were amended by the Act to similarly provide that an Enterprise may only pay compensation that it determines is reasonable and comparable with compensation for employment in other similar businesses, and that the Enterprise must report annually to Congress on the comparability of the compensation policies for their employees with the compensation policies of other similar businesses.<sup>4</sup> The Enterprises have the general power to select the individuals who will work for them and to set their specific compensation. The Act explicitly provides that OFHEO may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises.<sup>5</sup>

To effectuate OFHEO's charge to prohibit excessive compensation, the Act requires OFHEO to take such actions and perform such functions as the Director determines to be

necessary.<sup>6</sup> OFHEO may also require an Enterprise to submit reports and special reports as deemed appropriate and in such form as the Director may require.<sup>7</sup> Moreover, OFHEO has express statutory authority to retain any consultant that the Director determines is necessary to assist in such matters.<sup>8</sup> The Act also grants OFHEO a wide array of enforcement powers. Thus, without regard to the capital condition of an Enterprise, the Director can undertake enforcement actions, both formal and informal, including the issuance of a notice of charges, for conduct in violation of the compensation provisions of the Act, the charter acts or this regulation.<sup>9</sup> The Director can require an Enterprise, or any executive officer or member of the board of directors ("Board") to correct or remedy any violation in such manner as the Director determines to be appropriate.<sup>10</sup>

In addition to prohibiting the payment of excessive executive compensation, OFHEO is required to review termination benefits provided by the Enterprises to their executive officers. The respective charter acts of the Enterprises were identically amended by the Act to provide that an Enterprise may not enter into an agreement or contract to provide for payment of money or other thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by OFHEO.<sup>11</sup> The Act further amended the charter acts to prohibit the Director from approving termination benefits that are not comparable to such benefits provided by other public or private entities involved in financial services and housing interests to executives with comparable duties and responsibilities.

These amendments to the charter acts were effective after October 28, 1992. Therefore, agreements to provide termination payments to executives that were entered into before that date are not subjected to retroactive review for approval or disapproval by OFHEO. However, the amended charter acts provide that any subsequent renegotiation, amendment or change to any such agreement entered into on or

<sup>6</sup> Section 1313(8) (12 U.S.C. 4513(8)).

<sup>7</sup> Section 1314(a) (12 U.S.C. 4514(a)).

<sup>8</sup> Section 1315(e) (12 U.S.C. 4515(e)).

<sup>9</sup> Section 1371(a)(3) (12 U.S.C. 4631) and section 1372 (12 U.S.C. 4632).

<sup>10</sup> Section 1371(d)(7) (12 U.S.C. 4631(d)(7)).

<sup>11</sup> Section 310(d)(3)(B) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(3)(B)), and section 303(h)(2) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(h)(2)).

<sup>2</sup> Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

<sup>3</sup> Section 1318(a) (12 U.S.C. 4518(a)).

<sup>4</sup> Section 309(d)(2) and (3) of Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(d)(2) and (3)) and section 303(c) and (h) of Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(c) and (h)).

<sup>5</sup> Section 1318(b) (12 U.S.C. 4518(b)).

<sup>1</sup> 12 U.S.C. 4501 *et seq.*

before October 28, 1992, is to be considered as entering into an agreement subject to approval by OFHEO. An extension of such an agreement is deemed to constitute a change subject to OFHEO's prior approval. OFHEO's approval is required regardless of how such an extension is structured, *e.g.*, by a written agreement or by a resolution adopted by the Board of the Enterprise.

OFHEO published a notice of proposed rulemaking for public comment relating to its executive compensation oversight responsibilities.<sup>12</sup> Comments on the proposed regulation were received only from the two Enterprises. Those comments were carefully considered in developing this final regulation. A discussion of those comments and OFHEO's response to those comments follows.

## II. Comments on the Proposed Executive Compensation Regulation

### *General Comments*

#### OFHEO's Role and Authority

Both Enterprises commented that OFHEO has a narrow and precisely defined role with regard to executive compensation oversight. They described OFHEO's role as reviewing Board-established executive compensation decisions to determine whether they meet the comparability standards contained in the Enterprises' charter acts. One Enterprise stated that OFHEO cannot regulate what an Enterprise's Board chooses to pay senior executives or the Board's choice of a compensation structure. The Enterprise suggested that such regulation by OFHEO would interfere with management prerogatives; would amount to an undue regulatory interference; and would be contrary to a balance intended by Congress between regulatory action and the Enterprises' independence.

Both Enterprises noted other constraints on their executive compensation in addition to OFHEO's review. They stated that their executive compensation practices are subject to public disclosure under ERISA and other benefit laws and regulations. One Enterprise commented that extensive public disclosure also results from conformance with federal securities laws and stock exchange rules, responsiveness to market discipline, and compliance with reporting requirements to Congress.

OFHEO agrees that it has a defined role with regard to oversight of Enterprise executive compensation

practices. Under the Act, OFHEO is required to prohibit executive compensation that exceeds certain standards. Under the charter acts, OFHEO cannot approve termination benefits provided by an Enterprise to an executive officer that are not comparable to the requisite standards. In the event that OFHEO determines that compensation is excessive or that termination benefits are not similar, the Enterprise would have to revise the executive officer's compensation in order to render it reasonable and comparable. In fulfilling its congressionally defined role, OFHEO does not set executive salaries or dictate an Enterprise's choice of a compensation structure. OFHEO seeks to carry out its responsibilities in this area in the most efficient and least burdensome manner. The regulation sets forth clear processes designed to meet OFHEO's oversight needs, including the submission by the Enterprises of relevant information on a timely basis.

#### Safety and Soundness Issues

Both Enterprises asserted that OFHEO's executive compensation authority is separate and distinct from its safety and soundness authority. One Enterprise referred to the legislative history of OFHEO's enabling statute, suggesting that Congress was not concerned that excessive compensation practices pose a financial threat to the Enterprises, *i.e.*, asserting that such practices do not present a safety and soundness concern. The other Enterprise stated that, unlike the federal bank regulators, OFHEO's executive compensation oversight is not tied to the regulated entities' financial condition.

One Enterprise argued that OFHEO does not have broad authority under its executive compensation oversight authorities and that OFHEO's rulemaking should not take the same approach to remedial and corrective actions employed to address safety and soundness concerns, *i.e.*, remedies that address a threat to the financial integrity or stability of a regulated institution.

OFHEO disagrees. The executive compensation practices of corporations are widely acknowledged to reflect the integrity of management and soundness of corporate governance practices, as indicators of safe and sound operation. OFHEO recognizes that in addition to its broad authority to oversee the safety and soundness of the Enterprises policies and practices, including executive compensation matters, the agency has specific responsibilities unlike those of the banking agencies to review

compensation and termination benefits of the Enterprises' executive officers. OFHEO may use its full range of preventative and remedial tools to address problems in this area, including rescission agreements and recovery. OFHEO has modified the language of the final rule to clarify the special nature of executive compensation under the statute and the range of supervisory tools it may employ, both formal and informal.

#### Confidentiality Concerns

One Enterprise stated that inadvertent release of nonpublic executive compensation information may cause competitive and economic harm. The Enterprise suggested that such information only be subject to on-site review.

OFHEO recognizes the sensitive, nonpublic nature of certain information submitted by the Enterprises regarding their executive compensation practices and OFHEO has established appropriate safeguards under its internal procedures and regulations and in line with applicable federal law. Restricted review of executive compensation information at an Enterprise would be contrary to past and current practice. The suggested restriction would result in a less effective and inefficient implementation of OFHEO's oversight responsibilities and could delay timely reviews sought by the Enterprises. The final regulation continues to require the timely submission of all relevant information by the Enterprises to OFHEO in the manner and format specified by OFHEO.

#### *Section Comments*

##### Definitions (§ 1770.3(g))

Both Enterprises made several suggestions to narrow the definition of the term "executive officer" in the proposed regulation. The proposed definition of the term "executive officer" included the chairman of the Board, chief executive officer, chief financial officer, president, vice chairman and any executive vice president, and added the position of chief operating officer, and any individual who performs functions similar to such positions whether or not the individual has an official title. Additionally, the proposed definition of term "executive officer" covered any senior vice president ("SVP") or other individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division or function, or who reports directly to the Enterprise's chairman of the Board, vice

<sup>12</sup> 65 FR 81771 (December 27, 2000).

chairman, president or chief operating officer.

One Enterprise argued that the proposed definition of executive officer is inconsistent with the plain language and intent of the Act and suggested a narrower definition. The Enterprise objected to defining the term "executive officer" by reference to job function and including consideration of individuals performing "similar responsibilities, without regard to title." The Enterprise suggested that the definition of "executive officer" be confined to those titled SVPs in charge of a principal business unit, division or function; and that all other provisions in the proposed definition should be deleted. It further stated that the statutory language "in charge of" should be read narrowly to mean managerial and policymaking authority and responsibilities; and that "principal" business means of "highest importance," similar to the term's definition as used in accounting.

Both Enterprises noted the past use by OFHEO of a reporting function to define the term "executive officer." They suggested that, if OFHEO determines to use a broad standard, OFHEO should look to the Enterprises' principal lines of business to identify officers who play a key role in management and policymaking decisions. They asserted that an approach limiting review to officers managing key business units would avoid unnecessary reviews of officers engaged in support or subsidiary functions.

After consideration of the comments, OFHEO has determined to retain the definition of the term "executive officer" set forth in the proposed regulation, with one modification. The final regulation adds a provision that the Director shall inform the Enterprises of those officers covered by the definition. This is intended to allow continued discussion between OFHEO and the Enterprises as to the appropriate coverage of particular officers under the regulation.

OFHEO has retained from the proposed regulation the determination that, under the Enterprises' current organizational structure, any officer who reports directly to the chairman of the Board, vice chairman, president or chief operating officer is deemed to be in charge of a principal business unit, division, or function and has an important policymaking role, regardless of his or her title. The Director of OFHEO has discretion to define coverage of SVPs under the term "executive officer" whenever warranted by changes in either Enterprise's organizational structure, position responsibilities or other relevant factors.

In response to one Enterprise's request for clarification, it is noted here that administrative and support staff, such as secretaries and special assistants who report directly to the chairman, vice chairman, *etc.*, are not considered to be executive officers for purposes of this regulation.

#### Submissions Requirements (§ 1770.4) Categories of Information Relating to Prohibition of Excessive Compensation (§ 1770.4(b))

Both Enterprises commented that § 1770.4(b)(1) and (2) of the proposed regulation appear to require the submission of committee and board minutes within a week after the meeting of either. The Enterprises recommended that OFHEO amend both paragraphs to require the submission of minutes only after they are finalized, that is, after the adoption of minutes at the next board or committee meeting.

For purposes of clarification, paragraph (b) has been amended in this final regulation to provide that information on actions relating to compensation by the board of directors or the committee of the board responsible for compensation that are *effective immediately* upon board or committee action should be submitted to OFHEO within a week (along with supporting materials). Otherwise, OFHEO expects information regarding compensation to be submitted within a week of adoption of minutes by the board or the committee responsible for compensation, as this is the normal effective date for board or committee actions, usually taken at the next meeting of these bodies.

In response to one Enterprise's request for clarification, the term "supporting materials" as used in § 1770.4(b)(1) and (2) of the proposed regulation is defined here to mean copies of compensation documents that are referenced in or are incorporated by reference in the board or in committee resolutions, *e.g.*, human resources documents and benefit plans of the Enterprise. Continuing existing OFHEO practice, the regulation excepts individual performance ratings from its submission requirements.

Both Enterprises objected to proposed paragraph (b)(8) of § 1770.4, which requires submission to OFHEO of information regarding the hiring and payment of compensation to an executive for whom a contract remains under negotiation. One Enterprise suggested that proposed paragraph (b)(8) is not consistent with § 1770.5(a), which authorizes employment contracts to be entered into prior to OFHEO approval, provided they contain notice of the

approval requirement. The Enterprise recommended that paragraph (b)(8) be deleted.

OFHEO agrees that paragraph (b)(8) is unnecessary and has deleted the paragraph from the final regulation. The requirements contained in § 1770.5(a) will govern any contract negotiated and entered into prior to OFHEO's approval.

Revisions to paragraph (b) in this final regulation include the following: materials required for submission under paragraphs (b)(1) and (2) of the proposed regulation are now contained in paragraphs (b)(1) through (3) of the final regulation, and paragraphs (b)(3) through (7) of the proposed regulation are redesignated as paragraphs (b)(4) through (8) in the final regulation.

#### Timing of Submissions Related to Prior Approval of Termination Benefits (§ 1770.4(c))

Both Enterprises made extensive comment regarding paragraph (c) of § 1770.4. The paragraph sets out when information relevant to the Director's prior approval of termination benefits should be submitted by an Enterprise to OFHEO. As proposed, the paragraph requires that the relevant information be provided to OFHEO when the Enterprise: (1) Enters into any agreement or contract with a new or existing executive officer that includes termination benefits; (2) makes any extension or other amendment to such an agreement or contract; (3) takes any other action to provide termination benefits to a specific executive officer, regardless of how effected; (4) makes any changes in post-employment benefit programs affecting multiple executive officers; or (5) changes the termination provisions of other compensation programs affecting multiple executive officers.

One Enterprise recommended the deletion of the requirement in § 1770.4(c)(1) that requires submission of information on an agreement between an Enterprise and a new or existing officer because, assertedly, most executive officers "are not terminated," but rather leave voluntarily. The commenter suggested that this would save OFHEO from reviewing hypothetical terminations. The Enterprise noted that it could choose to submit a termination agreement for a current executive officer for review by OFHEO at any time.

OFHEO disagrees with this argument. Prior approval by OFHEO is mandatory whenever an Enterprise enters into or changes an agreement or contract with a new or existing executive that contains provisions providing termination benefits. The legislative

history of the Act contains no indication that the term "termination" is limited to involuntary situations. OFHEO considers the specific benefits to which an officer would be entitled under those provisions at the end of his or her employment term and compares those termination benefits to the applicable standard. This determination includes consideration of the effect on termination benefits if the executive departs prior to the expiration of the employment term, either on a voluntary or an involuntary basis. The proposed submission requirements of § 1770.4(c)(1) are therefore retained in the final regulation.

Both Enterprises objected to the language of paragraphs (c)(4) and (5) of § 1770.4 relating to changes in post-employment programs and in the termination provisions of other compensation programs affecting multiple executive officers. They noted that, as drafted, the provisions suggest that OFHEO has prior approval authority over changes in any compensation or benefit plan or program provided to all officers or corporate-wide. The Enterprises requested clarification that the provisions cover only individual termination packages that provide special benefits to an executive officer under so-called "top hat" plans, as opposed to benefits provided to multiple officers under general welfare and benefit plans. One Enterprise further stated that prior approval by OFHEO is not required for executive compensation generally available to similarly situated executives which is received as part of annual compensation, even if it is to be paid post-employment, *e.g.*, pensions, deferred compensation, stock option plans, and retirees' health benefits. It recommended deleting reporting requirements for general welfare and benefit plans and relocating provisions (4) and (5) from paragraph (c) to paragraph (b), which addresses review of "excessive" compensation. The Enterprise also recommended that only "material" changes to covered plans and programs be submitted to OFHEO.

OFHEO has made several clarifications and modifications to the submissions section of the final regulation. Section 1770.4(c), addressing timing of submissions of information for review of termination benefits, has been revised. The revisions indicate that, except as provided under § 1770.5(a), an Enterprise must submit certain delineated information before entering into agreements, making amendments or taking other actions on termination benefits and when changes to

termination benefits are made that affect multiple executive officers. Paragraph (d) of § 1770.4 has been revised to make clear that such submissions need not include information on benefit plans of general applicability, as the statute only contemplates review of "golden parachute" and similar contracts or grants.

Further, for purposes of clarification, OFHEO notes that information submissions under paragraph (c), at the times stated under provisions (1) through (4)—paragraphs (4) and (5) being consolidated in the final regulation—enable OFHEO to determine an individual executive officer's termination benefits. The total payment or value derived from all such termination benefits are included in OFHEO's consideration of compensation. The final regulation makes clear that, while OFHEO has access to benefit plans of general applicability under its oversight authorities, they are not required to be submitted for purposes of prior approval under the consideration of termination benefits. As noted earlier, the intent of the statute and the regulation is to focus on so-called "top hat plans," golden parachutes and similar arrangements. Any change in such benefits may alter the value of the total termination benefits package. Notably, if a change in termination benefits affects an executive officer, the Enterprise may request OFHEO's consideration of the change in officer termination benefits, in the context of previously-granted termination benefits, either at that time or when the officer leaves the Enterprise.

Additionally, both Enterprises expressed concern that the language of paragraphs (c)(4) and (5) appears to suggest that OFHEO can review an officer's compensation twice (under the "excessive" standard in the Act and under the standard for prior approval of termination benefits in the charter acts). One Enterprise stated that such review could result in retroactive disapproval of previously awarded compensation, creating recruitment, retention, and constitutional issues. The other Enterprise asserted that reviewing twice would be contrary to congressional intent.

OFHEO's review authority extends both to the "compensation" and to the individualized termination benefits package provided to an executive officer by an Enterprise. The term "compensation" is broadly defined to include benefits to an executive officer that are derived from post-employment benefit plans or programs and other compensatory benefit arrangements

containing termination benefits, which affect the executive officer individually or as part of a group. As a result, OFHEO reviews the value of benefits provided under such plans, programs and arrangements on an ongoing basis in exercising its dual review authorities. OFHEO aggregates the benefits provided under such plans, programs and arrangements with all other payments of money or any other thing of current or potential value to determine whether an officer's overall "compensation" is excessive.

OFHEO also reviews termination benefits provided by such plans, programs and arrangements in exercising its prior approval authority. Such a review is performed when any agreement that includes termination benefits is entered into, as well as at the time the executive officer leaves his or her employment with an Enterprise, if there have been benefit enhancements or modifications since the time the package was agreed upon. Upon determining that an officer's termination benefits package, as previously approved by OFHEO, has not changed in structure or terms, such package will not be subject to subsequent review or disapproval.

#### Specific Information to Calculate Termination Benefits (§ 1770.4(d))

Paragraph (d) of § 1770.4 of the proposed regulation specifies what information the Enterprise is to submit and when in order for OFHEO to calculate an executive officer's termination benefits package. Both Enterprises commented that paragraph (d) seems to prevent them from entering into an agreement with a new or departing officer prior to OFHEO approval if that agreement contains individualized termination provisions. They suggested that this would be a departure from current practice and would impede their ability to hire expeditiously. They also asserted that such a requirement would be inconsistent with proposed § 1770.5(a), which authorizes employment contracts to be entered into prior to OFHEO approval, provided they contain notice of the approval requirement.

As noted above in response to the Enterprises' comments on proposed § 1770.4(b)(8), an employment agreement subject to OFHEO's prior approval may be entered into prior to that approval, provided that such agreement satisfies the notice requirements set forth in § 1770.5(a).

One Enterprise requested clarification on paragraph (d)(1), which requires submission of details of a program change before entering into an

agreement containing termination provisions. The Enterprise suggested that the requirement not apply to programmatic benefits available to executives as part of their total compensation, but to "individualized departures" from programmatic termination benefits.

As noted above, in response to the Enterprises' comments on proposed § 1770.4(c)(4) and (5), paragraph (d) has been clarified in the final regulation to provide that submissions need not include information on benefit plans of general applicability, such as so-called 401(k) plans or general health plans.

#### Compliance (§ 1770.5)

One Enterprise requested deletion of proposed § 1770.5(b), which would require the Enterprises to adopt written procedures implementing the regulation's submission requirements, as unwarranted "micro-management" of the Enterprises' internal procedures. It further asserted that the regulation's force of law and the enforcement remedies of paragraph (d) are sufficient to ensure compliance without the need for written procedures.

OFHEO agrees that the regulation need not require written procedures implementing the submission requirements contained in § 1770.4. Therefore, paragraph (b) has been deleted from this final regulation. Paragraphs (c) and (d) have been consolidated and redesignated as paragraph (b) in the final regulation. Failure by an Enterprise to comply with the requirements of this regulation may warrant remedial action. OFHEO has broad formal and informal authorities to remedy problems and to enforce its determinations, including rescission agreements and recovery.

#### Regulatory Impact

##### Executive Order 12866, Regulatory Planning and Review

This regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final regulation has not been submitted to the

Office of Management and Budget for review.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the rule, as herein adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation only affects the Enterprises.

#### Paperwork Reduction Act

This final regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### Unfunded Mandates Reform Act of 1995

This final regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, this regulation implements specific statutory requirements. In addition, this regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

#### List of Subjects in 12 CFR Part 1770

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, OFHEO adds 12 CFR part 1770 to subchapter C to read as follows:

### PART 1770—EXECUTIVE COMPENSATION

#### Sec.

- 1770.1 Authority and scope.
- 1770.2 Purpose.
- 1770.3 Definitions.
- 1770.4 Submission requirements.
- 1770.5 Compliance.

**Authority:** 12 U.S.C. 1452(h)(2), 1723a(d)(3)(B), 4501(6), 4502(3), 4502(7), 4513, 4514, 4517, 4518(a), 4631, 4632, 4636, 4641.

#### § 1770.1 Authority and scope.

(a) *Authority.* Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act") (12 U.S.C. 4501 *et seq.*), established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. In general, OFHEO is the safety and soundness regulator of two housing-related government sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "the Enterprises"). The supervisory responsibilities of the Director of OFHEO (the "Director") include oversight of compensation provided by the Enterprises to their executive officers.

(b) *Scope.* The procedures set forth in this part apply to OFHEO's oversight of executive compensation under the following two statutory mandates:

(1) *Prohibition of excessive compensation.* The Act requires the Director to prohibit an Enterprise from providing compensation to any executive officer that is not reasonable and comparable with that paid by other similar businesses to executives doing similar work, *i.e.*, having similar duties and responsibilities. Businesses used for comparison purposes include publicly held financial institutions or major financial services companies. (12 U.S.C. 4518(a)). To effectuate this compensation oversight responsibility, the Act provides that the Director has full authority to take such actions as the Director determines are necessary. (12 U.S.C. 4513(8)). However, the Director may not prescribe or set a specific level or range of compensation for executive officers of the Enterprises. (12 U.S.C. 4518(b)).

(2) *Prior approval of termination benefits.* The Enterprises' enabling statutes ("charter acts") similarly provide that an Enterprise may not enter into any agreement or contract to provide any payment of money or other

thing of current or potential value in connection with the termination of employment of an executive officer unless the agreement or contract is approved in advance by the Director. The Director may only approve termination benefits that are comparable to benefits provided by other public or private entities involved in financial services and housing interests to executives with comparable duties and responsibilities. Agreements or contracts that provide for termination payments to executives that were entered into before October 28, 1992 are not retroactively subject to approval or disapproval by the Director. However, a renegotiation, amendment or change to such an agreement or contract entered into on or before October 28, 1992 shall be considered as entering into an agreement or contract that is subject to approval by the Director. (Section 309(d)(3)(B); 12 U.S.C. 1723a(d)(3)(B) of Fannie Mae's Charter Act; Section 303(h)(2); 12 U.S.C. 1452(h)(2) of Freddie Mac's Corporation Act)

#### **§ 1770.2 Purpose.**

In exercising responsibilities related to executive compensation, the Director has established a structured process for the submission of relevant information by each Enterprise. This part codifies those procedures and clarifies the terms used therein in order to facilitate and enhance the efficiency of OFHEO's oversight.

#### **§ 1770.3 Definitions.**

The following definitions apply to the terms used in this part:

(a) *The Act* is Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993), 12 U.S.C. 4501 *et seq.*, separately entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992."

(b) *Affiliate* means, except as provided by the Director, any entity that controls, is controlled by, or is under common control with, an Enterprise.

(c) *Charter acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

(d) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. Compensation includes all direct and indirect payments of benefits, both cash and non-cash, granted to or for the benefit of any executive officer,

including, but not limited to, payments and benefits derived from an employment contract compensation or benefit agreement, fee arrangement, perquisite, stock option plan, post employment benefit or other compensatory arrangement.

(e) *Director* means the Director of OFHEO or his or her designee.

(f) *Enterprise* means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and, except as provided by the Director, any affiliate thereof.

(g)(1) *Executive officer* means, with respect to an Enterprise:

(i) The chairman of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairman, any executive vice president, and any individual who performs functions similar to such positions whether or not the individual has an official title; and

(ii) Any senior vice president (SVP) or other individual with similar responsibilities, without regard to title:

(A) Who is in charge of a principal business unit, division or function, or

(B) Who reports directly to the Enterprise's chairman of the board of directors, vice chairman, president or chief operating officer.

(2) The Director shall inform the Enterprises of those officers covered by this definition.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

#### **§ 1770.4 Submission requirements.**

(a) *Submission of information to OFHEO.* All information required to be filed for purposes of this part is to be provided in a timely fashion by each Enterprise to OFHEO's Associate Director of the Office of Policy Analysis and Research, as specified in this section, or as designated by the Director.

(b) *Categories of information relating to prohibition of excessive compensation.* The following materials, unless otherwise specified, shall be provided by each Enterprise to OFHEO for review within one week after the specified action or event:

(1) Resolutions, including supporting materials and related reports, from meetings of the Enterprise's committee responsible for compensation when the committee takes any action regarding a compensation matter that under the committee's authority is effective without further action by the committee or the board of directors;

(2) Resolutions, including supporting materials and related reports (not otherwise provided to OFHEO under paragraph (b)(1) of this section), from meetings of the board of directors

relating to executive compensation when the board of directors takes any action regarding a compensation matter that is effective without any further action by the board of directors;

(3) Minutes, including supporting materials and related reports, when adopted by the committee responsible for compensation and those portions of minutes of the board of directors, including supporting materials and related reports, related to compensation matters (except for materials previously provided under paragraphs (b)(1) or (2) of this section);

(4) General benefit plans applicable to executive officers when adopted or amended;

(5) Any study conducted by or on behalf of an Enterprise with respect to compensation of executive officers;

(6) The Enterprise's annual compensation report to Congress when submitted;

(7) A current organizational chart when changes occur affecting the status of executive officers under this part;

(8) Proxy statements when issued; and,

(9) Such other information as deemed appropriate by the Director, except that submissions required under this paragraph shall not include materials related to the performance of specific individuals.

(c) *Timing of submissions related to prior approval of termination benefits.* All relevant information, except as provided under § 1770.5(a), should be provided to OFHEO, unless already provided under paragraph (b) of this section:

(1) Before an Enterprise enters into any agreement or contract with a new or existing executive officer that includes termination benefits;

(2) Before an Enterprise makes any extension or other amendment to such an agreement or contract;

(3) Before an Enterprise takes any other action to provide termination benefits to a specific executive officer, regardless of how effected; or

(4) When an Enterprise makes any changes to the termination provisions of any compensation or benefit program affecting multiple executive officers.

(d) *Specific information required for calculation of termination benefits.* For submissions under paragraph (c) of this section, an Enterprise shall submit to OFHEO the following materials:

(1) The details of the agreement or program change, e.g., employment agreements, termination agreements, severance agreements, and portions of minutes of the board of directors relating to executive compensation and minutes and supporting materials of the

compensation Committee of the board of directors;

(2) All information, data, assumptions and calculations for the potential total dollar value or range of values of the benefits provided, such as but not limited to salary, bonus opportunity, short-term incentives, long-term incentives, special incentives and pension provisions or related contract or benefit terms; and

(3) Such other information deemed appropriate by the Director, except that information required to be submitted under paragraph (c) of this section or under this paragraph shall not include information on benefit plans of general applicability.

**§ 1770.5 Compliance.**

(a) An employment agreement or contract subject to the Director's prior approval, as set forth in § 1770.1(b)(2), may be entered into prior to that approval, *provided that* such agreement or contract specifically provides that termination benefits under the agreement or contract shall not be effective and no payments shall be made thereunder unless and until approved by OFHEO. Such notice should make clear that alteration of benefit plans subsequent to OFHEO approval under this section, that affect final termination benefits of an executive officer, requires review at the time of the individual's termination from the Enterprise and prior to the payment of any benefits.

(b) Failure by an Enterprise to comply with the requirements this regulation

may warrant remedial action by OFHEO. Such action may be taken in the form determined appropriate by the Director and may be taken separately from, in conjunction with, or in addition to any other corrective or remedial action, including an enforcement action to require an individual to make restitution to or reimbursement to the Enterprise of excessive compensation or inappropriately paid termination benefits.

Dated: September 4, 2001.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 01-22926 Filed 9-11-01; 8:45 am]

**BILLING CODE 4220-01-U**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of Federal Housing Enterprise Oversight****12 CFR Part 1710**

RIN 2550-AA20

**Corporate Governance****AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is responsible for ensuring the safety and soundness of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises). In furtherance of that responsibility, OFHEO is proposing a regulation to set forth minimum requirements with respect to corporate governance practices and procedures of the Enterprises.

**DATES:** Written comments on the proposed regulation must be received by November 13, 2001.

**ADDRESSES:** Send written comments concerning the proposed regulation to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. Written comments may also be sent to Mr. Pollard by electronic mail at [RegComments@OFHEO.gov](mailto:RegComments@OFHEO.gov). OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word© or in portable document format (PDF) on 3.5" disk.

**FOR FURTHER INFORMATION CONTACT:** David W. Roderer, Deputy General Counsel, telephone (202) 414-3804 (not a toll-free number); or Isabella W. Sammons, Associate General Counsel, telephone (202) 414-3790 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:****Comments**

OFHEO invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO Internet web site at <http://www.ofheo.gov>. In addition, copies of

all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

**Background**

Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102-550, titled the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), established OFHEO as an independent office within the Department of Housing and Urban Development to ensure that the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, the Enterprises) are adequately capitalized and operate safely and in compliance with applicable laws, rules, and regulations.

Corporate governance involves the relationships between an Enterprise, its management, board of directors, shareholders, regulators, and other stakeholders. It provides the structure through which the business objectives and strategies of the Enterprises are set as well as the means of attaining those objectives and monitoring performance. In recent years, regulators, investor organizations, stock exchanges, and corporations themselves have increased their focus on the importance of good corporate governance practices and procedures to ensure the long-term success of corporations.

OFHEO recognizes that good corporate governance practices and procedures are essential to the safe and sound operations of the Enterprises and accomplishment of their public policy purposes. Thus, corporate governance is one category of risk and risk management that is examined by OFHEO under its annual risk-based examination program. The proposed regulation builds upon the annual risk-based examination program in that it sets forth basic safety and soundness standards for corporate governance with which the Enterprises are required to comply. The proposed corporate governance practices and procedures are substantively similar to those required by Federal banking agencies with respect to the regulated financial institutions. To a large extent, the corporate governance requirements set forth in the proposed regulation reflect the current practices of the Enterprises and the supervisory standards of OFHEO. The Enterprises must be able to continue to attract and retain the highest caliber of board members and executive officers.

**Section-by-Section Analysis***Subpart A—General**Section 1710.1 Purpose*

OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises. In furtherance of that responsibility, proposed § 1710.1 provides that the purpose of the proposed regulation is to set forth minimum requirements with respect to the corporate governance practices and procedures of the Enterprises.

*Section 1710.2 Definitions*

Proposed § 1710.2 sets forth the definitions of terms used in the proposed regulation. The term:

*Act* is proposed to mean the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub.L. 102-550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

*Agent* is proposed to mean any person, other than a board member, executive officer, or employee of an Enterprise, who acts on behalf or for the benefit of an Enterprise, such as representing an Enterprise in contacts with third parties or providing professional services to an Enterprise.

*Board member* is proposed to mean a member of the board of directors; and, for purposes of subpart D, "board member" is proposed to include a current or former board member.

*Board of directors* is proposed to mean the board of directors of an Enterprise.

*Chartering acts* is proposed to mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

*Compensation* is proposed to mean any payment of money or the provision of any other thing of current or potential value in connection with employment. The term "compensation" is also proposed to include all direct and indirect payments of benefits, both cash and non-cash, including, but not limited to, payments and benefits derived from compensation or benefit agreements, fee arrangements, perquisites, stock option plans, post employment benefits, or other compensatory arrangements.

*Conflict of interest* is proposed to mean an interest in a transaction, relationship, or activity that might affect adversely, or appear to affect adversely, the ability to perform duties and responsibilities on behalf of the

Enterprise in an objective and impartial manner.

*Director* means the Director of OFHEO or his or her designee.

*Employee* is proposed to mean a salaried individual, other than an executive officer, who works part-time, full-time, or temporarily for an Enterprise.

*Enterprise* is proposed to mean the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term "Enterprises" is proposed to mean, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

*Entity* is proposed to mean a corporation, company, association, firm, joint venture, general or limited partnership, society, joint stock company, fund, or other organization or institution.

*Executive officer* is proposed to mean any senior executive officer and any senior vice president or individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president; and, for purposes of subpart D, "executive officer" is proposed to include a current or former executive officer.

*Independent board member* is proposed to mean a board member who meets the criteria for independence under the NYSE rules for audit committee members, regardless of the committee(s) on which the board member serves.

*Legal expenses* is proposed to mean, with respect to a claim, proceeding, or action, the amount of legal or other professional fees and expenses, and the amount of, and any cost incurred in connection with a penalty, fine, assessment, judgment, or settlement.

*NYSE* means the New York Stock Exchange.

*OFHEO* means the Office of Federal Housing Enterprise Oversight.

*Payment*, for purposes of subpart D of this part, is proposed to mean:

- (1) Direct or indirect transfer of funds or assets;
- (2) Forgiveness of a debt or other obligation;
- (3) Conferment of a benefit, including but not limited to stock options and stock appreciation rights; and
- (4) Segregation of funds or assets, establishment or funding of a trust, or purchase of or arrangement for a letter of credit or other instrument, for the purpose of making, or pursuant to an agreement to make, a payment on or after the date on which such funds or

assets are segregated, such trust is established, or such letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on the determination, after such date, of the liability for the payment of such amount or the liquidation of the amount of such payment.

*Person* is proposed to mean an individual or entity.

*Senior executive officer* is proposed to mean the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

#### Sections 1710.3–1710.9

Sections 1710.3 through 1710.9 are proposed to be reserved.

#### Subpart B—Corporate Practices and Procedures

##### Section 1710.10 Applicable Law

Congress established the Enterprises as privately owned corporations, imbued with private and public purposes, to be managed by their respective boards of directors. To dispel any legal uncertainty as to whether and to what extent State or Federal law applies to corporate governance practices and procedures of the Enterprises, proposed § 1710.10 would require that each Enterprise elect to follow and be bound by a specified body of corporate governance law to the extent such law is not inconsistent with applicable Federal law, rules, or regulations, including the standards proposed here. Specifically, the proposal requires the Enterprise to elect either the law of the jurisdiction in which its principal office is located, Delaware General Corporation Law, or the Model Business Corporation Act. The Enterprise is required to specify its election in its bylaws.

The proposed approach provides the Enterprises with flexibility in structuring their corporate governance practices and procedures while at the same time providing shareholders and other interested parties with certainty as to the body of corporate law applicable to each Enterprise.

OFHEO requests comments as to whether the choice of law to be elected should be narrower or broader than proposed. More particularly, should the law of the jurisdiction where the principal office of the Enterprise is located be the applicable law? Should the Delaware General Corporation Law

and the Model Business Corporation Act be permissible alternatives? Should Federal law or agency-promulgated standards be the sole legal basis for corporate governance practices and procedures of the Enterprises?

##### Section 1710.11 Committees of Board of Directors

Proposed § 1710.11 provides that an Enterprise may establish committees of the board of directors, in addition to the minimally required audit and compensation committees. No committee is to have the authority of the board of directors to amend the bylaws and no committee is to operate to relieve the board of directors or any board member of any responsibility imposed by applicable laws, rules, and regulations. In addition, proposed § 1710.11 requires that each Enterprise provide in its bylaws for the establishment of audit and compensation committees, however styled.<sup>1</sup>

The proposed section requires that the audit committee comply with all NYSE rules with respect to the audit committee, including charter, independence, composition, and expertise requirements.<sup>2</sup> The NYSE rules are adequate to ensure an effective and independent audit committee without further supplementation by OFHEO. Furthermore, since both Enterprises are listed with the NYSE, the Enterprises should not need to make changes to their respective audit committees to comply with the requirements of proposed § 1710.11.

The compensation committee is proposed to be comprised of at least three independent board members. The proposed duties of the compensation committee include ensuring that compensation plans for executive officers and employees comply with applicable laws, rules, and regulations and approving the compensation of senior executive officers.

OFHEO specifically requests comments as to whether the definition of the term "independent board member" in proposed § 1710.2 is appropriate to use with respect to the

<sup>1</sup> The importance of an independent audit committee has received increased attention by recent publications, including the *Recommendation of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees*, sponsored by the NYSE and the National Association of Securities Dealers, which can be accessed at <http://www.nyse.com> or <http://www.nasd.com>.

<sup>2</sup> The NYSE rules applicable to audit committees are in sections 303.01 and 303.02 of the NYSE Listed Company Manual, which can be accessed at <http://www.nyse.com>.

independence of board members of the compensation committee.

*Section 1710.12 Compensation of Board Members, Executive Officers, and Employees*

Proposed § 1710.12 requires that the compensation of board members, executive officers, and employees be reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations.<sup>3</sup>

*Section 1710.13 Quorum of Board of Directors; Proxies Not Permissible*

Proposed § 1710.13 requires that each Enterprise provide in its bylaws that, for the transaction of business, a quorum of the board of directors is a majority of the entire board of directors and that a board member may not vote by proxy.

*Section 1710.14 Conflict-of-Interest Standards*

Proposed § 1710.14 requires that each Enterprise establish and administer written conflict-of-interest standards that will provide reasonable assurance that the board members, executive officers, employees, and agents of the Enterprise discharge their responsibilities in an objective and impartial manner.

*Sections 1710.15–1710.19*

Sections 1710.15 through 1710.19 are proposed to be reserved.

*Subpart C—Responsibilities of Board of Directors*

*Section 1710.20 Conduct of Board Members*

Proposed § 1710.20 sets forth the standards that board members must follow in conducting the business of the Enterprise. In addition to devoting sufficient time to his or her duties and responsibilities, each board member is to act:

- (1) On a fully informed, impartial, objective, and independent basis;
- (2) In good faith and with due diligence, care, and loyalty;
- (3) In the best interests of the shareholders and the Enterprise; and
- (4) In compliance with the chartering acts of the Enterprises and other applicable laws, rules, and regulations.

This proposed section is based on current legal standards embodied in State law and the Model Business Corporation Act.

*Section 1710.21 Responsibilities of Board of Directors*

Proposed § 1710.21 sets forth the responsibilities of the board of directors. The board of directors is responsible for managing the conduct and affairs of the Enterprise to ensure that the Enterprise is operated in a safe and sound manner, including, at a minimum:

- (1) Reviewing and overseeing corporate strategy, major plans of action, and risk policy as well as monitoring corporate performance;
- (2) Hiring and retaining qualified senior executive officers and overseeing succession planning for such senior executive officers;
- (3) Ensuring that compensation plans for executive officers and employees comply with applicable law, rules, and regulations and approving the compensation of board members and senior executive officers.
- (4) Ensuring the integrity of the accounting and financial reporting systems of the Enterprise, including independent audits, and that appropriate systems of control are in place to identify and monitor risk and compliance with the chartering acts of the Enterprises and other applicable laws, rules, and regulations;
- (5) Remaining informed of the condition, activities, and operations of the Enterprise;
- (6) Overseeing the process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors; and
- (7) Ensuring the responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

The proposed section also notes that the board of directors should refer to publications of and formal pronouncements by OFHEO for guidance on the responsibilities of the board of directors.<sup>4</sup> The proposed section is based on current OFHEO supervisory standards as well as State laws and the Model Business Corporation Act.

The proposed section also notes that the board of directors should refer to publications of and formal pronouncements by OFHEO for guidance on the responsibilities of the board of directors.<sup>4</sup> The proposed section is based on current OFHEO supervisory standards as well as State laws and the Model Business Corporation Act.

*Sections 1710.22–1710.29*

Sections 1710.22 through 1710.29 are proposed to be reserved.

<sup>4</sup> For example, the *OFHEO Examination Handbook*, published at <http://www.ofheo.gov>, provides information and sets forth the examination criteria with respect to responsibilities of the board of directors.

*Subpart D—Indemnification Payments*

*§ 1710.30 Permitted Indemnification Payments*

Proposed § 1710.30 delineates the circumstances under which an Enterprise may make or agree to make indemnification payments. In proposing this section, OFHEO has considered the likely effect of such delineation on the ability of the Enterprises to attract and retain competent board members, executive officers, employees, and agents, and defers to applicable law in connection with actions not initiated or undertaken by OFHEO.

OFHEO considers an administrative proceeding to be initiated or undertaken by the issuance of a notice of charges. With respect to administrative proceedings initiated or undertaken by OFHEO, the proposed section permits an Enterprise to make or to agree to make indemnification payments, which are not prohibited under proposed § 1710.31, to a board member or executive officer, if the following two criteria are met:

- (1) The board of directors of the Enterprise, in good faith, determines in writing after due investigation and consideration that the board member or executive officer acted in good faith and in a manner he or she believed to be in the best interests of the Enterprise and that the indemnification payment will not materially adversely affect the safety and soundness of the Enterprise; and
- (2) The board member or executive officer agrees in writing to reimburse the Enterprise, to the extent the Enterprise is not covered by a commercial insurance policy or similar coverage, for that portion of any indemnification payment that subsequently becomes a prohibited indemnification payment under proposed § 1710.31.

In connection with an administrative proceeding initiated or undertaken by OFHEO, proposed § 1710.30 provides that the board member or executive officer requesting an indemnification payment is not to participate in any way in the discussion of the board of directors and approval of such payment. It does, however, provide that the board member or executive officer may present the request for indemnification to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding.

If a majority of board members are named as respondents in an administrative proceeding initiated or undertaken by OFHEO and request indemnification, proposed § 1710.30 provides that the remaining board

<sup>3</sup> OFHEO has issued a proposed regulation with respect to the compensation of executive officers at 65 FR 81771 (Dec. 27, 2000).

members may authorize independent legal counsel to review the indemnification request and provide the remaining board members with a written opinion of counsel as to whether the two criteria for payment, noted above, are met. If the opinion of counsel concludes that the criteria have been met, the remaining board members may rely on the opinion in authorizing the requested indemnification.

Likewise, if all of the board members are named as respondents in an administrative proceeding and request indemnification, proposed § 1710.30 provides that the board of directors is to authorize independent legal counsel to review the indemnification request and provide the board of directors with a written opinion of counsel as to whether the two criteria have been met. If the opinion of counsel concludes that the criteria have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

These proposed procedures address the conflicts inherent in situations where the majority or all of the board members are subjects of an administrative proceeding. The use of independent legal counsel provides for an unbiased review of the two criteria necessary to approve indemnification and does not impose an undue hardship on the Enterprise. The board members may, of course, decline to approve the indemnification request despite a favorable opinion of legal counsel. OFHEO would consider legal counsel to be independent for purposes of the proposed section if the legal counsel is not a member of the legal staff of the Enterprise, does not have a recent or ongoing relationship with the Enterprise or any of its board members or senior executive officers, and has no other conflict of interest.

In a civil action or an administrative proceeding not initiated or undertaken by OFHEO, the proposed section authorizes an Enterprise to provide for payment to any board member, executive officer, employee, or agent of the Enterprise of legal expenses, in accordance with applicable law, provided that such payment is consistent with the safe and sound operations of the Enterprise.

#### *Section 1710.31 Prohibited Indemnification Payments*

Proposed § 1710.31 addresses when indemnification is prohibited in connection with an administrative proceeding that OFHEO initiates or undertakes. Thus, the proposed section does not permit an Enterprise or any affiliate of an Enterprise to make or

agree to make, with certain exceptions, any payment to indemnify a board member or executive officer for any legal expense incurred in connection with an administrative proceeding initiated or undertaken by OFHEO that results in a final order or settlement pursuant to which such board member or executive officer is assessed a civil money penalty or is required to cease and desist from or take any affirmative action with respect to the Enterprise.

The proposed exceptions to this prohibition are that an Enterprise may make a reasonable payment that:

(1) Is used to purchase a commercial insurance policy or similar coverage; provided, that such insurance policy or similar coverage is not used to indemnify a board member or executive officer for the cost of any civil money penalty assessed against him or her in an administrative proceeding initiated or undertaken by OFHEO, but may be used to pay other legal expenses incurred in connection with such administrative proceeding or the amount of any restitution to the Enterprise; or

(2) Represents partial indemnification for legal expenses specifically attributable to particular charges for which there has been a formal and final adjudication or finding in connection with a settlement that the board member or executive officer has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty.

With respect to the second exception noted above, OFHEO recognizes that the appropriate amount of any partial indemnification may be difficult to ascertain with certainty. OFHEO, nevertheless, is of the opinion that the permissibility of partial indemnification is more equitable than an all or nothing approach.

#### **Regulatory Impact**

##### *Executive Order 12866, Regulatory Planning and Review*

The proposed regulation is not classified as a significant rule under Executive Order 12866 because it would not result in an annual effect on the economy of \$100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory

impact assessment is required and this proposed regulation has not been submitted to the Office of Management and Budget for review.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the proposed regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

#### **List of Subjects in 12 CFR Part 1710**

Administrative practice and procedure, Government Sponsored Enterprises.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add subchapter B to 12 CFR chapter XVII as follows:

#### **Subchapter B—Corporate Governance**

#### **PART 1710—CORPORATE GOVERNANCE**

##### **Subpart A—General**

Sec.

1710.1 Purpose.

1710.2 Definitions.

1710.3–1710.9 [Reserved]

##### **Subpart B—Corporate Practices and Procedures**

1710.10 Applicable law.

1710.11 Committees of board of directors.

1710.12 Compensation of board members, executive officers, and employees.

1710.13 Quorum of board of directors; proxies not permissible.

1710.14 Conflict-of-interest standards.

1710.15–1710.19 [Reserved]

##### **Subpart C—Responsibilities of Board of Directors**

1710.20 Conduct of board members.

1710.21 Responsibilities of board of directors.

1710.22–1710.29 [Reserved]

**Subpart D—Indemnification Payments**

1710.30 Permitted indemnification payments.

1710.31 Prohibited indemnification payments.

**Authority:** 12 U.S.C. 4513(a) and 4513(b)(1).

**Subpart A—General****§ 1710.1 Purpose.**

OFHEO is responsible under the Act for ensuring the safety and soundness of the Enterprises. In furtherance of that responsibility, this part sets forth minimum requirements with respect to the corporate governance practices and procedures of the Enterprises.

**§ 1710.2 Definitions.**

For purposes of this part, the term:

(a) *Act* means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941 through 4012 (1993) (12 U.S.C. 4501 *et seq.*).

(b) *Agent* means any person, other than a board member, executive officer, or employee of an Enterprise, who acts on behalf or for the benefit of an Enterprise, such as representing an Enterprise in contacts with third parties or providing professional services to an Enterprise.

(c) *Board member* means a member of the board of directors; and, for purposes of subpart D of this part, the term “board member” includes a current or former board member.

(d) *Board of directors* means the board of directors of an Enterprise.

(e) *Chartering acts* mean the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act, which are codified at 12 U.S.C. 1716 through 1723i and 12 U.S.C. 1451 through 1459, respectively.

(f) *Compensation* means any payment of money or the provision of any other thing of current or potential value in connection with employment. The term “compensation” includes all direct and indirect payments of benefits, both cash and non-cash, including, but not limited to, payments and benefits derived from compensation or benefit agreements, fee arrangements, perquisites, stock option plans, post employment benefits, or other compensatory arrangements.

(g) *Conflict of interest* means an interest in a transaction, relationship, or activity that might affect adversely, or appear to affect adversely, the ability to perform duties and responsibilities on

behalf of the Enterprise in an objective and impartial manner.

(h) *Director* means the Director of OFHEO or his or her designee.

(i) *Employee* means a salaried individual, other than an executive officer, who works part-time, full-time, or temporarily for an Enterprise.

(j) *Enterprise* means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and the term “Enterprises” means, collectively, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(k) *Entity* means a corporation, company, association, firm, joint venture, general or limited partnership, society, joint stock company, fund, or other organization or institution.

(l) *Executive officer* means any senior executive officer and any senior vice president of an Enterprise and any individual with similar responsibilities, without regard to title, who is in charge of a principal business unit, division, or function of an Enterprise, or who reports directly to the chairperson, vice chairperson, chief operating officer, or president of an Enterprise; and, for purposes of subpart D of this part, the term “executive officer” includes a current or former executive officer.

(m) *Independent board member* means a board member who meets the criteria for independence under the NYSE rules for audit committee members, regardless of the committee(s) on which the board member serves.

(n) *Legal expenses* means, with respect to a claim, proceeding, or action, the amount of legal or other professional fees and expenses, and the amount of, and any cost incurred in connection with a penalty, fine, assessment, judgment, or settlement.

(o) *NYSE* means the New York Stock Exchange.

(p) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(q) *Payment*, for purposes of subpart D of this part, means:

(1) Direct or indirect transfer of funds or assets;

(2) Forgiveness of a debt or other obligation;

(3) Conferment of a benefit, including but not limited to stock options and stock appreciation rights; and

(4) Segregation of funds or assets, establishment or funding of a trust, or purchase of or arrangement for a letter of credit or other instrument, for the purpose of making, or pursuant to an agreement to make, a payment on or after the date such funds or assets are segregated, such trust is established, or such letter of credit or such other

instrument is made available, without regard to whether the obligation to make such payment is contingent on the determination, after such date, of the liability for such payment or the liquidation of the amount of such payment.

(r) *Person* means an individual or entity.

(s) *Senior executive officer* means the chairperson of the board of directors, chief executive officer, chief financial officer, chief operating officer, president, vice chairperson, any executive vice president of an Enterprise, and any individual, without regard to title, who has similar responsibilities.

**§§ 1710.3–1710.9 [Reserved]****Subpart B—Corporate Practices and Procedures****§ 1710.10 Applicable law.**

(a) *Election.* Each Enterprise shall elect to follow and be bound by the corporate governance practices and procedures of one of the following bodies of law, to the extent such procedures are not inconsistent with safety and soundness and applicable Federal law, rules, and regulations:

(1) Law of the jurisdiction in which the principal office of the Enterprise is located;

(2) Delaware General Corporation Law, Del. Code Ann. tit. 8, as amended; or

(3) Model Business Corporation Act, as amended.

(b) *Designation.* Each Enterprise shall designate in its bylaws the body of law elected pursuant to paragraph (a) of this section within 90 calendar days from the effective date of this part.

**§ 1710.11 Committees of board of directors.**

(a) *Committees.* An Enterprise may provide in its bylaws for the establishment of committees of the board of directors, in addition to the audit and compensation committees required under paragraph (b) of this section. No committee of the board of directors shall have the authority of the board of directors to amend the bylaws and no committee shall operate to relieve the board of directors or any board member of any responsibility imposed by applicable laws, rules, and regulations.

(b) *Audit and compensation committees.* Each Enterprise shall provide in its bylaws, within 90 calendar days after the effective date of this part, for the establishment of the following committees, however styled:

(1) An audit committee that is in compliance with the charter, independence, composition, expertise, and all other requirements of the audit committee rules of the NYSE.

(2) A compensation committee, comprised of at least three independent board members, whose duties include, at a minimum, ensuring that compensation plans for executive officers and employees comply with applicable laws, rules, and regulations and approving the compensation of senior executive officers.

**§ 1710.12 Compensation of board members, executive officers, and employees.**

Compensation of board members, executive officers, and employees shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities and comply with applicable laws, rules, and regulations.

**§ 1710.13 Quorum of board of directors; proxies not permissible.**

Each Enterprise shall provide in its bylaws, within 90 calendar days from the effective date of this part, that, for the transaction of business, a quorum of the board of directors is a majority of the entire board of directors and that a board member may not vote by proxy.

**§ 1710.14 Conflict-of-interest standards.**

Each Enterprise shall establish and administer written conflict-of-interest standards that will provide reasonable assurance that the board members, executive officers, employees, and agents of the Enterprise discharge their responsibilities in an objective and impartial manner.

**§§ 1710.15–1710.19 [Reserved]**

**Subpart C—Responsibilities of Board of Directors**

**§ 1710.20 Conduct of board members.**

(a) *Actions.* Each member of the board of directors of an Enterprise, in conducting the business of the Enterprise, shall act:

- (1) On a fully informed, impartial, objective, and independent basis;
- (2) In good faith and with due diligence, care, and loyalty;
- (3) In the best interests of the shareholders and the Enterprise; and
- (4) In compliance with the chartering act of the Enterprise and other applicable laws, rules, and regulations.

(b) *Time.* Each board member of an Enterprise shall devote sufficient time and attention to his or her responsibilities in conducting the business of the Enterprise.

**§ 1710.21 Responsibilities of board of directors.**

(a) *Responsibilities.* The board of directors is responsible for managing the conduct and affairs of the Enterprise to ensure that the Enterprise is operated in a safe and sound manner, including, at a minimum:

(1) Reviewing and overseeing corporate strategy, major plans of action, risk policy, as well as monitoring corporate performance;

(2) Hiring and retaining qualified senior executive officers and overseeing succession planning for such senior executive officers;

(3) Ensuring that compensation plans for executive officers and employees comply with applicable law, rules, and regulations and approving the compensation of board members and senior executive officers;

(4) Ensuring the integrity of the accounting and financial reporting systems of the Enterprise, including independent audits, and that appropriate systems of control are in place to identify and monitor risk and compliance with the chartering act of the Enterprise and other applicable laws, rules, and regulations;

(5) Remaining informed of the condition, activities, and operations of the Enterprise;

(6) Overseeing the process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors; and

(7) Ensuring the responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

(b) *Additional guidance.* The board of directors should refer to publications of and formal pronouncements of OFHEO for guidance on the responsibilities of the board of directors.

**§§ 1710.22–1710.29 [Reserved]**

**Subpart D—Indemnification Payments**

**§ 1710.30 Permitted indemnification payments.**

(a) *OFHEO administrative proceedings.* (1) Except as provided in § 1710.31, an Enterprise may make or agree to make indemnification payments to a board member or executive officer of the Enterprise with respect to legal expenses incurred in connection with an administrative proceeding initiated or undertaken by OFHEO, if:

(i) The board of directors of the Enterprise, in good faith, determines in writing after due investigation and consideration that the board member or executive officer acted in good faith and

in a manner he or she believed to be in the best interests of the Enterprise and that the indemnification payment will not materially adversely affect the safety and soundness of the Enterprise; and

(ii) The board member or executive officer agrees in writing to reimburse the Enterprise, to the extent the Enterprise is not covered by any commercial insurance policy or similar coverage, for that portion of an indemnification payment that subsequently becomes a prohibited indemnification payment under § 1710.31.

(2) In connection with an administrative proceeding initiated or undertaken by OFHEO:

(i) The board member or executive officer requesting an indemnification payment shall not participate in any way in the discussion of the board of directors and approval of such payment; provided, however, that such board member or executive officer may present the request for indemnification to the board of directors and respond to any inquiries from the board of directors concerning his or her involvement in the circumstances giving rise to the administrative proceeding.

(ii) In the event that a majority of the board members are named as respondents, the remaining board members may authorize independent legal counsel to review the indemnification request and provide the remaining board members with a written opinion of counsel as to whether the conditions delineated in paragraph (a)(1) of this section have been met. If the opinion of counsel concludes that such conditions have been met, the remaining members of the board of directors may rely on the opinion in authorizing the requested indemnification.

(iii) In the event that all of the board members are named as respondents, the board of directors shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in paragraph (a)(1) of this section have been met. If the opinion of counsel concludes that such conditions have been met, the board of directors may rely on the opinion in authorizing the requested indemnification.

(b) *Other civil actions or administrative proceedings.* In cases involving a civil action or an administrative proceeding not initiated or undertaken by OFHEO, an Enterprise may provide for payment to any board member, executive officer, employee, or agent of the Enterprise of legal expenses in accordance with applicable law, provided that such payment will not

materially adversely affect the safety and soundness of the Enterprise.

**§ 1710.31 Prohibited indemnification payments.**

(a) *Prohibited indemnification payments.* An Enterprise or any affiliate of an Enterprise may not make, except as provided in paragraph (b) of this section, any payment to indemnify any board member or executive officer for any legal expense incurred in connection with an administrative proceeding initiated or undertaken by OFHEO that results in a final order or settlement pursuant to which the board member or executive officer is assessed a civil money penalty or is required to cease and desist from or take any affirmative action with respect to the Enterprise.

(b) *Exceptions.* An Enterprise may make a reasonable payment that:

(1) Is used to purchase any commercial insurance policy or similar coverage; provided, however, that such insurance policy or similar coverage shall not be used to indemnify a board member or executive officer for the cost of any civil money penalty assessed against him or her in an administrative proceeding initiated or undertaken by OFHEO, but may be used to pay other legal expenses incurred in connection with such administrative proceeding or to pay the amount of any restitution to the Enterprise; or

(2) Represents partial indemnification for legal expenses specifically attributable to particular charges for which there has been a formal and final adjudication or a finding in connection with a settlement that the board member or executive officer has not violated certain laws or regulations or has not engaged in certain unsafe or unsound practices or breaches of fiduciary duty.

Dated: September 4, 2001.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1773**

**RIN 2550-AA21**

**Flood Insurance**

**AGENCY** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Proposed regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight ("OFHEO") is proposing a regulation to codify the authority and responsibility of OFHEO to oversee and enforce the statutory requirements affecting the operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under the National Flood Insurance Reform Act of 1994, and to effect congressionally mandated adjustments to the civil money penalties applicable to violations of that law.

**DATES:** Comments regarding this notice of proposed rulemaking must be received in writing on or before October 12, 2001.

**ADDRESSES:** Send written comments to Alfred M. Pollard, General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. Written comments may also be sent by electronic mail at [RegComments@ofheo.gov](mailto:RegComments@ofheo.gov). OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (pdf) on 3.5" disk.

**FOR FURTHER INFORMATION CONTACT:** David A. Felt, Associate General Counsel, Office of General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Fourth Floor, Washington, DC 20552, telephone (202) 414-3750 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

**SUPPLEMENTARY INFORMATION:**

**Comments**

OFHEO invites comments on all aspects of the proposed regulation, including legal and policy considerations, and will take all comments into consideration before issuing the final regulation. Copies of all comments will be posted on the OFHEO Internet web site at <http://www.ofheo.gov>. In addition, copies of all comments received will be available for examination by the public at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

*I. Statutory Framework*

Title XIII of the Housing and Community Development Act of 1992, Pub. L. No. 102-550, entitled the "Federal Housing Enterprises Financial Safety and Soundness Act of 1992" (the

"Act"),<sup>1</sup> established the Office of Federal Housing Enterprise Oversight ("OFHEO") as an independent office within the Department of Housing and Urban Development. OFHEO is the financial safety and soundness regulator of the nation's two largest housing-related Government-sponsored enterprises: the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, the "Enterprises"). In addition to establishing OFHEO, the Act made amendments to the Enterprises' enabling statutes (collectively, "the Charter Acts")<sup>2</sup> among other things, accommodate the restructured regulatory regime under the Act.

The National Flood Insurance Act of 1968 ("NFIA")<sup>3</sup> and the Flood Disaster Protection Act of 1973 ("FDPA"),<sup>4</sup> as amended by the National Flood Insurance Reform Act of 1994 ("NFIRA"),<sup>5</sup> together create a comprehensive National Flood Insurance Program ("NFIP") that includes various provisions designed to ensure that structures built in flood plains are covered by statutory minimum amounts of flood insurance. NFIRA added specific requirements explicitly applicable to the Enterprises,<sup>6</sup> designated OFHEO as the Federal agency responsible for determining compliance of the Enterprises' flood insurance responsibilities, required OFHEO to report their compliance in the agency's 1996, 1998 and 2000 annual reports,<sup>7</sup> and provided OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA.<sup>8</sup> NFIRA also authorized OFHEO to impose civil money penalties upon an Enterprise that fails to implement procedures reasonably designed to ensure that the loans it purchases comply with the mandatory flood insurance purchase requirements.<sup>9</sup>

More specifically, NFIRA requires that the Enterprises each implement procedures reasonably designed to ensure that any mortgage loan that is purchased and is secured by property located in a designated flood hazard

<sup>1</sup> 12 U.S.C. 4501 *et seq.*

<sup>2</sup> Federal National Mortgage Association Charter Act (12 U.S.C. 1716-1723i) and Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451-1459).

<sup>3</sup> Codified at 42 U.S.C. 4001 *et seq.* and other scattered sections of 42 U.S.C.

<sup>4</sup> Codified at 42 U.S.C. 4002 *et seq.* and other scattered sections of 42 U.S.C.

<sup>5</sup> Pub. L. No. 103-325 (Sept. 23, 1994) (codified, as amended, at 42 U.S.C. 4001-4129).

<sup>6</sup> 42 U.S.C. 4012a(b)(3).

<sup>7</sup> 12 U.S.C. 4521(a)(4).

<sup>8</sup> 42 U.S.C. 4001 note.

<sup>9</sup> 42 U.S.C. 4012a(f)(c).

area is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of (1) the outstanding principal balance of the loan or (2) the maximum limit of coverage made available for that type of property under the NFIP. OFHEO is authorized under NFIRA to levy a civil money penalty of \$350 per violation, not to exceed \$100,000 per year, against an Enterprise that it finds to have engaged in a pattern or practice of purchasing loans in violation of the procedures.<sup>10</sup>

## II. Background

The Enterprises have a key role in the implementation of the Federal Government's flood insurance program, particularly with regard to lenders that are not subject to direct supervision by a Federal regulatory agency. The Enterprises use their seller/servicer guidelines and other quality control review procedures to ensure that lenders with whom they contract comply with the applicable flood insurance laws. The Enterprises are required to establish procedures designed to prevent their purchase of loans that do not comply with these laws. NFIRA tasks OFHEO with reviewing the adequacy of such procedures as well as the Enterprises' compliance with them.

A primary purpose of the proposed regulation is to reiterate the relevant statutory provisions specifically applicable to the Enterprises and to OFHEO and to codify them in OFHEO's regulations. The proposed regulation is intended to provide guidance as to the procedures to be applied if an enforcement action were to be required, to add statutory civil money penalty amounts for infractions of the flood insurance requirements to the schedule of penalties in OFHEO's regulations and to adjust such penalty amounts as contemplated by law for inflation.

### The Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act),<sup>11</sup> requires Federal agencies with the authority to issue civil money penalties, to adopt regulations to adjust each civil money penalty authorized by law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of civil money penalties and promote compliance with the law. The Inflation Adjustment Act requires agencies to make an initial adjustment

of their civil money penalties upon the statute's enactment, and to make additional adjustments on an ongoing basis, at least once every four years following the initial adjustment.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable civil money penalty is determined by increasing the maximum civil money penalty amount by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index since the civil money penalties were last adjusted or established.

NFIRA sets forth the procedures under which the Director of OFHEO could impose civil money penalties against an Enterprise and the amounts of these civil money penalties. In this rulemaking, the amounts of these civil money penalties are being adjusted in accordance with the requirements of the Inflation Adjustment Act. The increases in maximum civil money penalty amounts contained in this proposed rule do not mandate the amount of any civil money penalty that OFHEO may seek for a particular violation; OFHEO would determine each civil money penalty on a case-by-case basis in light of the circumstances of the case.

The Inflation Adjustment Act directs Federal agencies to calculate each civil money penalty adjustment as the percentage by which the CPI-U for June of the calendar year preceding the adjustment exceeds the CPI-U for June of the calendar year in which the amount of such civil money penalty was last set or adjusted pursuant to law. OFHEO has not previously adjusted these CMP amounts, so the base period is 1994, the year in which the CMPs were enacted into law by NFIRA. Because OFHEO is making these adjustments in calendar year 2001, and NFIRA was enacted in 1994, the inflation adjustment amount for each civil money penalty was calculated by comparing the CPI-U for June 1994 (148.0) with the CPI-U for June 2000 (172.4), resulting in an inflation adjustment of 16.5 percent. For each civil money penalty, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act,<sup>12</sup> then added to the

previous maximum penalty amount to determine the new adjusted maximum penalty amount. However, the Inflation Adjustment Act further specifies that the first adjustment of any CMP pursuant to such Act may not exceed ten percent of the penalty. Accordingly, the original civil money penalty maximum of \$350 under NFIA is increased to \$385 for each violation and the civil money penalty maximum of \$100,000 is increased to \$110,000 for the total assessed penalties against any Enterprise during any calendar year.

## Section-By-Section Analysis

### Section 1773.1 Authority and Scope

Section 1773.1 sets forth the authority upon which this proposed regulation is based, namely the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. The National Flood Insurance Reform Act of 1994 requires OFHEO to examine the Enterprises to ascertain their compliance with these statutes and to report to Congress on their compliance, and provides OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is authorized to impose civil money penalties on an Enterprise for violation of procedures established pursuant to the National Flood Insurance Act of 1968, as amended, or rules or regulations adopted pursuant thereto.<sup>13</sup>

### Section 1773.2 Requirements

Section 1773.2(a) sets forth the requirement that each Enterprise is to implement procedures reasonably designed to ensure that the properties securing particular loans described in paragraph (a) are properly insured in accordance with the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. This requirement applies to any loan purchased by an Enterprise that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which

<sup>12</sup> The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of

penalties greater than \$10,000 but less than or equal to \$100,000; \$100,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$5,000 in the case of penalties greater than \$200,000.

<sup>13</sup> 42 U.S.C. 4012a(f)(3).

<sup>10</sup> 42 U.S.C. 4012a(f)(3)(5).

<sup>11</sup> 28 U.S.C. 2461 note.

flood insurance is available under the National Flood Insurance Program. As explained in paragraph (a), the Enterprise is required to ensure that a building or mobile home, and any personal property securing such loan are covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Program.

Section 1773.2(b) proposes that the procedures in paragraph (a) need apply only to loans made, increased, extended, or renewed after September 22, 1995. It further provides that paragraph (a) does not apply to any loan having an original outstanding principal balance of \$5,000 or less and a repayment term of one year or less.

#### *Section 1773.3 Civil Money Penalties*

Section 1773.3 sets forth procedures under this proposed section under which the Director of OFHEO may impose civil money penalties against an Enterprise. Section 1773.3(a) sets forth that the Director of OFHEO may assess a civil money penalty against an Enterprise determined by the Director to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to § 1773.2.

Section 1773.3(b) sets forth notice and hearing requirements prior to the imposition of civil money penalties under this section. A civil money penalty may be issued only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

Section 1773.3(c) sets forth the maximum amount of civil money penalties that may be imposed on an Enterprise under this section. A civil money penalty under this section may not exceed the adjusted statutory amount of \$385 for each violation and the total amount of penalties assessed under this section against an Enterprise during any calendar year may not exceed the adjusted statutory cap of \$110,000 for such total penalties.

Section 1773.3(d) sets forth procedures for the deposit of civil money penalties. Any civil money penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

Section 1773.3(e) provides that any civil money penalty under this section shall be in addition to any civil remedy or criminal penalty otherwise available.

Section 1773.3(f) provides that no penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized.

#### **Regulatory Impact**

##### *Executive Order 12866, Regulatory Planning and Review*

This proposed rule is not deemed to be a significant rule under Executive Order 12866 because it will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this proposed rule has not been submitted to the Office of Management and Budget for review.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of this proposed rule under the Regulatory Flexibility Act. The General Counsel certifies that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

##### *Paperwork Reduction Act*

This proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

##### *Unfunded Mandates Reform Act of 1995*

This proposed rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate

requirements specifically set forth in law. As explained in the preamble, this rule implements specific statutory requirements. In addition, this rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

#### **List of Subjects in 12 CFR Part 1773**

Administrative practice and procedure, Flood insurance, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, OFHEO proposes to add 12 CFR part 1773 to subchapter C of chapter XVII as follows:

#### **PART 1773—FLOOD INSURANCE**

##### *Sec.*

1773.1 Authority and scope.

1773.2 Requirements.

1773.3 Civil money penalties.

**Authority:** 12 U.S.C. 4521(a)(4); 42 U.S.C. 4001 note; 28 U.S.C. 2461 note; 42 U.S.C. 4012a(f)(3), (4), (8), (9), (10).

##### **§ 1773.1 Authority and scope.**

(a) *Authority.* The National Flood Insurance Act of 1968, title XII of Pub. L. No. 90–448, Aug. 1, 1968, 42 U.S.C. 4002 *et seq.*, and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4002 *et seq.*, as amended by the National Flood Insurance Reform Act of 1994 (“NFIRA”), Pub. L. No. 103–325, Sept. 23, 1994, 42 U.S.C. 4001–4129, together create the National Flood Insurance Program (“NFIP”) which established specific requirements applicable to the Enterprises. NFIRA designates OFHEO as the Federal agency responsible for determining compliance by the Enterprises with these statutes and with reporting to Congress biannually for six years on the Enterprises’ compliance. OFHEO with the authority to issue any regulations necessary to carry out the applicable provisions of NFIRA. OFHEO is also charged with enforcing the requirements of NFIRA as to the Enterprises and provides for the assessment of civil money penalties for violations of the procedures established by the Enterprises pursuant to the law or implementing regulations.

(b) *Scope.* This part sets forth the responsibilities of the Enterprises under NFIRA and the procedures to be used in any proceeding to assess civil money penalties against an Enterprise under NFIRA.

##### **§ 1773.2 Requirements.**

(a) *Procedures.* Each Enterprise shall implement procedures reasonably

designed to ensure for any loan that is secured by improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance is available under the NFIP, and purchased by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in an amount at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage made available with respect to the particular type of property under the NFIP.

(b) *Applicability.* (1) Paragraph (a) of this section shall apply only with respect to any loan made, increased, extended, or renewed after September 22, 1995.

(2) Paragraph (a) of this section shall not apply to any loan having an original

outstanding balance of \$5,000 or less and a repayment term of one year or less.

#### **§ 1773.3 Civil money penalties.**

(a) *In general.* If an Enterprise is determined by the Director of OFHEO to have engaged in a pattern or practice of purchasing loans in violation of the procedures established pursuant to the NFIA, as amended, or to § 1773.2, the Director may assess civil money penalties against such Enterprise in such amount or amounts as deemed to be appropriate under paragraph (c) of this section.

(b) *Notice and hearing.* A civil money penalty under this section may be assessed only after notice and an opportunity for a hearing on the record has been provided under 12 CFR part 1780.

(c) *Amount.* A civil money penalty under this section may not exceed \$385 for each violation. The total amount of penalties assessed under this section

against an Enterprise during any calendar year may not exceed \$110,000.

(d) *Deposit of penalties.* Any penalties collected under this section shall be paid into the National Flood Mitigation Fund in accordance with 42 U.S.C. 4104d.

(e) *Additional penalties.* Any penalty under this section shall be in addition to, and shall not preclude, any civil remedy or criminal penalty otherwise available.

(f) *Statute of limitations.* No civil money penalty may be imposed under this section after the expiration of the four-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this section.

Dated: September 4, 2001.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

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**LIST OF PUBLIC LAWS**

This is a continuing list of  
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may be used in conjunction  
with "PLUS" (Public Laws  
Update Service) on 202-523-  
6641. This list is also  
available online at [http://  
www.nara.gov/fedreg](http://www.nara.gov/fedreg).

The text of laws is not  
published in the **Federal  
Register** but may be ordered  
in "slip law" (individual  
pamphlet) form from the  
Superintendent of Documents,  
U.S. Government Printing  
Office, Washington, DC 20402  
(phone, 202-512-1808). The  
text will also be made  
available on the Internet from  
GPO Access at [http://  
www.access.gpo.gov/nara/  
index.html](http://www.access.gpo.gov/nara/index.html). Some laws may  
not yet be available.

**H.R. 93/P.L. 107-27**

Federal Firefighters Retirement  
Age Fairness Act (Aug. 20,  
2001; 115 Stat. 207)

**H.R. 271/P.L. 107-28**

To direct the Secretary of the  
Interior to convey a former  
Bureau of Land Management  
administrative site to the city  
of Carson City, Nevada, for

use as a senior center. (Aug.  
20, 2001; 115 Stat. 208)

**H.R. 364/P.L. 107-29**

To designate the facility of the  
United States Postal Service  
located at 5927 Southwest  
70th Street in Miami, Florida,  
as the "Marjory Williams  
Scrivens Post Office". (Aug.  
20, 2001; 115 Stat. 209)

**H.R. 427/P.L. 107-30**

To provide further protections  
for the watershed of the Little  
Sandy River as part of the  
Bull Run Watershed  
Management Unit, Oregon,  
and for other purposes. (Aug.  
20, 2001; 115 Stat. 210)

**H.R. 558/P.L. 107-31**

To designate the Federal  
building and United States  
courthouse located at 504  
West Hamilton Street in  
Allentown, Pennsylvania, as  
the "Edward N. Cahn Federal  
Building and United States  
Courthouse". (Aug. 20, 2001;  
115 Stat. 213)

**H.R. 821/P.L. 107-32**

To designate the facility of the  
United States Postal Service  
located at 1030 South Church  
Street in Asheboro, North  
Carolina, as the "W. Joe  
Trogon Post Office Building".  
(Aug. 20, 2001; 115 Stat. 214)

**H.R. 988/P.L. 107-33**

To designate the United  
States courthouse located at  
40 Centre Street in New York,  
New York, as the "Thurgood  
Marshall United States  
Courthouse". (Aug. 20, 2001;  
115 Stat. 215)

**H.R. 1183/P.L. 107-34**

To designate the facility of the  
United States Postal Service  
located at 113 South Main  
Street in Sylvania, Georgia, as  
the "G. Elliot Hagan Post  
Office Building". (Aug. 20,  
2001; 115 Stat. 216)

**H.R. 1753/P.L. 107-35**

To designate the facility of the  
United States Postal Service  
located at 419 Rutherford  
Avenue, N.E., in Roanoke,  
Virginia, as the "M. Caldwell  
Butler Post Office Building".  
(Aug. 20, 2001; 115 Stat. 217)

**H.R. 2043/P.L. 107-36**

To designate the facility of the  
United States Postal Service  
located at 2719 South  
Webster Street in Kokomo,  
Indiana, as the "Elwood  
Haynes 'Bud' Hillis Post Office  
Building". (Aug. 20, 2001; 115  
Stat. 218)

**Last List August 21, 2001**

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